Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1993

DR. BETTYE R. LANGLEY,

Petitioner,

v.

JACKSON STATE UNIVERSITY and
DR. JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

DENNIS L. HORN
SHIRLEY PAYNE
Post Office Box 1725
Jackson, Mississippi 39215-1725
(601) 373-0170

Counsel for Petitioner

May 13, 1994

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit's refusal to enforce a pre-dismissal settlement should be analyzed on remand in light of the decision to be issued this term in *Kokkenen v. Guardian Life Ins. Co. of America*, 993 F.2d 883 (9th Cir. 1993), *cert. granted*, ___ U.S. ___, 114 S.Ct. 341, 126 L.Ed.2d 306 (1993)?

2. Whether a federal court does possess independent jurisdiction to enforce settlement of cases arising under Title VII of the Civil Rights Act of 1964?

3. Whether a pre-determination settlement is to be interpreted under state or federal common law?

4. If a Title VII settlement creates a state law contract, must a federal court consider supplemental jurisdiction over that settlement in conjunction with a Title VII claim?

5. Whether this case should be remanded for consideration of Title VI of the Civil Rights Act of 1964, in accordance with this Court's reversal and remand of *U.S. v. Fordice*, ___U.S.___, 112 S.Ct. 2727 (1992)?

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Dr. Bettye R. Langley, and the Respondents, Jackson State University and Dr. James A. Hefner, in His Official Capacity, substituted by Dr. Herman Smith, and then by Dr. James Lyons, successor, President of Jackson State University, in his official capacity.

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No. _____

In The

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DR. BETTYE R. LANGLEY,

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v.

JACKSON STATE UNIVERSITY and
DR. JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

Bettye R. Langley, Ph.D., respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled proceeding on February 28, 1994.

OPINIONS BELOW

The opinion of the Court of Appeals (App., *infra*, 1-13) is reported at 14 F.3d 1070 (5th Cir. 1994). The

opinions of the District Court (App., *infra*, 14-16 and 22-113) are unreported.

JURISDICTION

The Court of Appeals entered its opinion on February 28, 1994 (App., *infra*, 1-13) and denied Petition for Rehearing and Petition for Rehearing En Banc by its Order of March 30, 1994. (App., *infra*, 119-120) Petitioner was granted a Stay of Mandate on April 18, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(f)(3) provides:

> Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title [42 USCS at 2000e *et seq.*].

Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d provides:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

STATEMENT OF THE CASE

Petitioner Bettye R. Langley is a professor of early childhood education at Jackson State University, one of the still identifiable black campuses of the Mississippi University system. Dr. Langley is white. Her 1986 claim of race discrimination resulted in a preliminary injunction issued on her behalf. (App. 14-16) Later, Dr. Langley accepted a settlement with Jackson State University and agreed to dismiss her lawsuit. (App. 121-127).

The settlement was announced to the District Court and recorded as an Order of Dismissal dated August 13, 1987. (App. 17) That order recited the duties of the parties to "consummate this settlement." (*Id.*) The parties executed the written settlement agreement on September 4, 1987. (App. 121-127) Based upon the terms of the settlement agreement the District Court entered a Stipulation and Order for Dismissal dated September 9, 1987. (App. 18) Its terms were brief:

> BY STIPULATION of the undersigned representatives for all parties in this action, pursuant to Rule 41 of the Federal Rules of Civil Procedure, it is hereby finally ordered, adjudged and decreed that the action is dismissed, with prejudice, with the parties to bear their own costs and attorney fees.

The Court did not retain jurisdiction and it did not incorporate the terms of the parties' settlement into its decree.

In 1989 Dr. Langley again filed a charge of race discrimination against Jackson State University. This time she also claimed that retaliation had been directed against her because of her former suit and that Jackson

State University had breached its settlement with her because of its retaliation and its ongoing racism. Dr. Langley filed a new action based on these charges. She also reopened her previous 1986 lawsuit and consolidated the two actions for trial. (App. 20-21).

The District Court ruled that there is definite race consciousness at Jackson State University. (App. 109) Resentment of, and animosity toward, minority (white) faculty and students (App. 102-105) is evidenced by remarks along the lines of "whites have no place at this black university." (App. 109) The district court found, however, that Dr. Langley had chosen to work at Jackson State University, knowing that the University was a historically black institution, and knowing that it remained an almost totally black institution. (App. 109) Her expectations that the working environment would be free from race consciousness were too high and too idealistic. (*Id.*) The district court similarly denied relief based on Dr. Langley's claims of retaliation.[1]

The Court declined to rule that there was a hostile working environment such that would require an injunction and continuing oversight by the Court. (App. 112) Instead, the Court granted Dr. Langley a $23,429.38 judgment, but based its award solely on Jackson State University's breach of the settlement agreement. (App. 112 and App. 114).

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[1] Since that ruling the same District Court has found that Jackson State University did retaliate when it fired Dr. Marie Roos, a white professor who had testified on behalf of Dr. Langley. *Roos v. Smith, et al., Jackson State University,* 837 F.Supp. 803 (S.D.Miss. 1993).

On a post judgment motion, the District Court explained that Dr. Langley had presented the basis of her damage award as an issue enumerated under her second Title VII complaint, where "Dr. Langley specifically raised the issue of whether she had been paid for teaching an overload . . . ," (App. 115).

The Fifth Circuit vacated the District Court's determination that Jackson State University breached the settlement agreement. It dismissed Dr. Langley's suit to enforce that agreement for lack of jurisdiction, while it affirmed the district court's findings that Dr. Langley had failed to prove discrimination based on race or retaliation. (App. 1-13).

Meanwhile, Dr. Langley is teaching in the university system which is in litigation toward a desegregation decree under *U.S. v. Fordice*, ___U.S.___, 112 S.Ct. 2727 (1992). Dr. Langley's job is to prepare elementary school teachers for a public school system governed by the results of numerous civil rights suits brought throughout the State of Mississippi since 1954.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit's Refusal to Enforce a Pre-dismissal Settlement Should be Analyzed on Remand in Light of the Decision to be Issued this Term in *Kokkenen v. Guardian Life Ins. Co. of America*, 993 F.2d 883 (9th Cir. 1993), *cert. granted*, ___ U.S. ___, 114 S.Ct. 341, 126 L.Ed.2d 306 (1993).

Dr. Langley's settlement assured her of specific protection from discrimination against her by Jackson State

University officials. By ruling this agreement a contract enforceable only by the state law of Mississippi, the Fifth Circuit, for the first time, declared itself to be among those circuits refusing to recognize the inherent power of the district courts to enforce agreements settling litigation pending before them. The panel opinion expressly rejected the Ninth Circuit's decision in *Kokkenen v. Guardian Life Ins. Co. of America*, 993 F.2d 883 (9th Cir. 1993), *cert. granted*, ___ U.S. ___, 114 S.Ct. 341, 126 L.Ed.2d 306 (1993), in apparent anticipation of a similar decision from this Court resolving the inter-circuit conflict concerning enforcement of pre-dismissal settlements. *Compare, Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.) (finding subject matter jurisdiction over a post-dismissal action to enforce a settlement agreement, by virtue of a district court's "inherent power to enforce settlement agreements entered into in settlement of litigation pending before [it]"), *cert. denied*, 429 U.S. 862, 97 S.Ct. 165, 50 L.Ed.2d 140 (1976), with *McCall-Bey v. Franzen*, 777 F.2d 1178, 1186-87 (7th Cir. 1985) (holding that "unless jurisdiction is retained [a] settlement agreement requires an independent basis of federal jurisdiction in order to be enforceable in federal rather than state court").

Whatever the outcome of *Kokkenen*, the decision in *Langley v. Jackson State University* should be remanded to the district court for analysis of the controlling elements of that new decision.

II. There is a split in the circuits as to whether a federal court does possess an independent basis to enforce settlement of cases arising under Title VII of the Civil Rights Act of 1964.

Because Title VII establishes a national policy against race discrimination, an independent basis for federal jurisdiction should be recognized.

The circuits heretofore refusing to enforce private settlements were persuaded of the need to avoid the over expansive exercise of the federal courts' limited jurisdiction. There are controversies in which the federal interest may not be apparent, such as disputes over the meaning of an agreement between parties which is essentially a dispute between residents of the same state over the meaning of their contract. Such disputes are collateral to the federal interests. Dr. Langley's private agreement is not of this kind. Her agreement adopts into its terms the purposes of the national policies expressed in Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e and Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, forbidding a black university in Mississippi from discrimination on the basis of race. This is the kind of dispute "that is likely to require for its just resolution the special independence, experience, and perspective that federal courts may be thought to bring to the decision of certain cases."[2] *Cf. McCall-Bey, supra.*

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[2] Federal enforcement of settlements is also apparently expected under Rule 68 F.R.Civ.P. and the Civil Justice Reform Act of 1990.

Enforcement of a settlement has been held by this Court to warrant an interlocutory federal appeal as denial of an

Circuits which had found jurisdiction to enforce settlements of actions arising under Title VII include: *Durrett v. Housing Authority of the City of Providence*, 896 F.2d 600 (1st Cir. 1990); *Sawka v. Healtheast*, 989 F.2d 138 (3d Cir. 1993); *EEOC v. Henry Beck Co.*, 729 F.2d 301 (4th Cir. 1984) (action to enforce pre-determination settlement was, in effect, brought under Title VII); *Robles v. United States*, 1990 W.L. 155545 (DDC July 20, 1990); *see also EEOC v. Safeway Stores, Inc.*, 714 F.2d 567, 575 (5th Cir. 1983), *cert. denied*, 567 U.S. 1204 (1984) (distinguished in *Langley v. Jackson State University* as conferring Title VII jurisdiction only on conciliation agreements and not settlements); *Johnson v. Michael P.W. Stone*, 16 F.3d 1219 (6th Cir. 1994), 1994 U.S.App. LEXIS 1844; *EEOC v. Liberty Trucking Co.*, 695 F.2d 1038 (7th Cir. 1982) (enforcement of EEOC conciliation agreement was action brought under Title VII for jurisdictional purposes); *Johnson v. Landmark Plaza, Ltd.*, 1994 U.S.App. LEXIS 2076 (Feb. 8, 1994) *citing U.S. v. Hardage*, 982 F.2d 1491, 1496 (10th Cir. 1993); *Brewer v. Muscle Shoals Board of Education*, 790 F.2d 1515, 1519 (11th Cir. 1986) ("Congress intended Title VII to be enforced primarily through conciliation and voluntary compliance," at 1523).

The Third Circuit, along with the Fifth, has held that a federal court does not have the power to enforce a Title VII settlement agreement which is the basis of, but not incorporated into, an order or judgment of the court.

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injunction in *Carson v. American Brands, Inc.*, 450 U.S. 79 (1981); *but see, Desktop Direct, Inc. v. Digital Equip. Corp.*, 993 F.2d 755 (10th Cir.), *cert. granted*, ___U.S.___, 114 S.Ct. 379 (1993).

Even if this Court holds that pure diversity settlements such as *Kokkenen* are not enforceable, the Court should grant certiorari in *Langley* to resolve the further split in the courts re: enforceability of settlements of cases with substantial federal interests, such as those arising under, *inter alia*, Title VII and other civil rights statutes, admiralty, patent law, copyright, and antitrust law.

III. Interpreting Title VII settlements under federal, rather than state law, would further uniformity in the application of the national policy on race relations, and resolve a split among the circuits.

There is a conflict among the various circuits as to whether a Title VII settlement creates a contract to be interpreted under state or federal common law. The circuits holding that a settlement agreement is a state law contract include, now, the Fifth, *Langley*, and Seventh, *e.g. Dhaliwal v. Woods Division, Hesston Corp.*, 930 F.2d 547 (7th Cir. 1991).

The Fifth Circuit's decision in Langley is at odds with its prior ruling in *Fulgence v. J. Ray McDermott*, 662 F.2d 1207 (5th Cir. 1981) (verbal contract settling pending discrimination suit enforceable under federal rather than Louisiana law). The Eleventh Circuit has expressly held that a Title VII settlement is to be interpreted under federal common law. *Eatmon v. Bristol Steel & Iron Works, Inc.*, 769 F.2d 1503, 1509 (11th Cir. 1985). The Third is another applying federal law, *Seredinski v. Clifton Precision Products Co.*, 776 F.2d 56 (3d Cir. 1985), and the Sixth Circuit has identified three approaches to settlement of federal anti-discrimination laws: federal law, state law,

and waiver doctrine, but has yet to choose among those doctrines. *Ullman v. Olwine, Connelly, Chase, O'Donnell and Weyher*, 951 F.2d 350 (6th Cir. 1991), 1991 U.S.App. LEXIS 32277.

This Court has lent its support to a federal analysis by holding that Title VII necessarily acts as a limit on a district court's authority to modify a consent decree, noting that such an issue "cannot be resolved solely by reference to the terms of the decree and notions of equity," *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 576 n. 9 (1984), and that "there can be no prospective waiver of an employee's rights under Title VII," *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974). These statutory constrictions would not be enforceable over state law of contracts.

IV. If a Title VII settlement creates a state law contract, must a federal court consider supplemental jurisdiction over that settlement in conjunction with a Title VII claim?

Dr. Langley's claim for enforcement of her settlement may be considered as a pendent claim. The basis for jurisdiction would be 28 U.S.C. Section 1367. Neither the District Court nor the Fifth Circuit Court of Appeals addressed the applicability of supplemental jurisdiction.

V. This case should be remanded for consideration of Title VI, in accordance with this Court's reversal and remand of *U.S. v. Fordice*, ___U.S.___, 112 S.Ct. 2727 (1992).

In *U.S. v. Fordice*, this Court ruled that both the District Court and the Fifth Circuit Court of Appeals had

erred in allowing racially distinct universities to operate within Mississippi.

Dr. Langley pled jurisdiction on claims raised pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d. The decisions below wholly failed to address that claim as a source of jurisdiction. In *U.S. v. Fordice*, ___U.S.___, 112 S.Ct. 2727 (1992) the United States Supreme Court remanded that prior case concerning segregation in Mississippi's colleges and universities, because "The Court of Appeals also misanalyzed the Title VI claim . . . " and "failed to perform the same factual inquiries." *U.S. v. Fordice*, ___U.S.___, 112 S.Ct. at 2737, n.7. On this basis, a remand is required for the case here presented.

CONCLUSION

While this Court may wish to encourage the development of a more standardized practice in the methods used for implementing settlement agreements, granting Professor Bettye Langley an employment agreement enforceable solely under the Mississippi state law of contracts does not provide her with the protection against discrimination she bargained for in agreeing to settle her Title VII litigation. Equally, the national interest in applying a consistent policy on race relations must be implemented through the machinery that assures private litigants a remedy under Title VII.

Respectfully submitted,

DENNIS L. HORN
SHIRLEY PAYNE

DENNIS L. HORN, MSB #2645
SHIRLEY PAYNE, MSB #4071
HORN & PAYNE
P. O. Box 1725
Jackson, MS 39215-1725
(601) 373-0170

Dr. Bettye R. LANGLEY, Plaintiff-Appellee Cross-Appellant,

v.

JACKSON STATE UNIVERSITY and Dr. Herman Smith, in his Official Capacity, Defendants-Appellants Cross-Appellees.

No. 92-7461.

United States Court of Appeals,
Fifth Circuit

Feb. 28, 1994.

Professor brought action against university to enforce settlement of prior Title VII suit and to recover for discrimination based on race. The United States District Court for the Southern District of Mississippi, Tom S. Lee, J., found breach of settlement agreement and ruled against professor on discrimination issue. Appeals were taken. The Court of Appeals, Emilio M. Garza, Circuit Judge, held that: (1) district court lacked jurisdiction over action to enforce settlement agreement, and (2) because no direct evidence of motivating racial animus existed, district court properly refused to apply "motivating factor" proof methodology.

Affirmed in part and vacated in part.

Appeal from the United States District Court for the Southern District of Mississippi.

Before DUHÉ and EMILIO M. GARZA, Circuit Judges, and BLACK,* District Judge.

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*Chief Judge of the Southern District of Texas, sitting by designation.

EMILIO M. GARZA, Circuit Judge:

Jackson State University ("JSU") appeals the district court's factual finding that JSU breached the terms and conditions of an agreement which settled a prior racial discrimination suit brought by Dr. Bettye R. Langley. Langley cross-appeals, contending that the district court improperly allocated the burden of proof in finding that she failed to prove discrimination based upon her race or retaliation for bringing a prior discrimination suit. For the reasons set forth below, we affirm in part, and vacate and dismiss in part.

I

In 1977, Dr. Langley, a white female, began working at JSU, a predominately black institution in Jackson, Mississippi, as a professor of elementary and early childhood education in JSU's School of Education. In 1986 Dr. Langley filed a discrimination suit against JSU, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., claiming, *inter alia*, that she was being denied the opportunity to conduct a child abuse workshop because of her race. A year later, Langley and JSU entered into a settlement agreement. The district court, noting that the parties had stipulated to dismiss the action, ordered that the action be dismissed with prejudice. The court, however, neither approved nor incorporated the settlement agreement into its order of dismissal. The court also did not indicate that it intended to retain jurisdiction over

future actions brought to enforce the settlement agreement.[1]

In 1990, Dr. Langley filed another Title VII suit against JSU, claiming that JSU had discriminated against her because of her race and in retaliation for her prior Title VII suit. Dr. Langley claimed in particular that Dr. Johnnie Mills, a black female and academic dean of the School of Education, and Dr. Anita Hall, a black female and chairperson of Dr. Langley's academic department, constantly required her to teach an overload, refused to timely pay her, refused to approve her workshops in accordance with JSU policy, denied her merit pay increases, refused to provide her with office space, furniture and telephone service, assigned her to double registration duties, and denied her sabbatical leave and travel expenses, all on account of Dr. Langley's race. In a separate action, Dr. Langley further claimed that JSU was violating the terms and conditions of the settlement agreement regarding the prior Title VII suit. The two actions were consolidated before trial.[2]

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[1] The district court's order of dismissal provided:

> BY STIPULATION of the undersigned representatives for all parties in this action, pursuant to Rule 41 of the Federal Rules of Civil Procedure, it is hereby finally ordered, adjudged and decreed that the action is dismissed, with prejudice, with the parties to bear their own costs and attorney fees.

[2] Dr. Langley did not argue that jurisdiction over the motion to enforce the settlement agreement resulted from the fact that the breach of the settlement agreement constituted unlawful discrimination in violation of Title VII. Instead, Dr. Langley argued that because the case which the agreement settled was an action arising under Title VII, the district court

After a six-day bench trial, the district court issued a memorandum opinion and order, finding that Dr. Langley did not "sustain[ ] her burden of persuasion to demonstrate that any treatment she . . . received [was] the result of retaliation and/or discrimination or that she has been subjected to a hostile racial environment such as would entitle her to relief." The district court further found, however, that Dr. Langley was "entitled to recover compensation for her work as continuing education coordinator from and after January 1990 inasmuch as the proof showed that [JSU] failed to grant her the twenty-five percent reduction set forth in her settlement agreement with [JSU] for those services."[3]

JSU contends on appeal that the district court lacked subject matter jurisdiction over the action to enforce the settlement agreement, and that even if the court had jurisdiction, the court clearly erred in finding that JSU breached the terms and conditions of the agreement. In her cross-appeal, Dr. Langley contends that the district court erred in failing to apply a "motivating factor" proof methodology[4] to her claims of discrimination and retaliation.

"retain[ed] said [federal subject matter] jurisdiction to enforce the settlement agreement."

[3] The district court did not address jurisdiction over the motion to enforce the settlement agreement in its opinion.

[4] *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989).

II

A Breach of the Settlement Agreement

1. Subject Matter Jurisdiction

JSU first contends that the district court lacked subject matter jurisdiction over Dr. Langley's action to enforce the settlement agreement.[5] Citing *Fairfax County-wide Citizens v. Fairfax County*, 571 F.2d 1299 (4th Cir.), *cert. denied*, 439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d 706 (1978), JSU argues that because the district court failed to approve or incorporate the settlement agreement into its order of dismissal, the court required some independent ground upon which to base federal jurisdiction. In *Fairfax*, the district court dismissed a racial discrimination suit brought under the Equal Protection Clause after the parties had entered into settlement agreements. *See id.*, 571 F.2d at 1301. The district court neither approved nor incorporated the settlement agreements into its dismissal orders. *See id.* Three years later, plaintiffs moved the district court to vacate its dismissal orders to that the court could enforce the settlement agreements. *See id.* at 1302. The Fourth Circuit held that while "a district court has the authority under Rule 60(b)(6) to vacate its prior dismissal order and restore the case to its docket," a district court is not empowered to enforce a settlement

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[5] The consolidation of Dr. Langley's two separate actions did not confer subject matter jurisdiction over the action to enforce the settlement agreement. Where two actions have been consolidated, we must examine "each consolidated case separately to determine the jurisdictional premise upon which each stands." *Kuehne & Nagel (AG & CO) v. Geosource, Inc.*, 874 F.2d 283, 287 (5th Cir. 1989).

agreement "unless the agreement had been approved and incorporated into an order of the court, or, at the time the court is requested to enforce the agreement, there exists some independent ground upon which to base federal jurisdiction." *Id.* at 1303; *see also McCall-Bey v. Franzen*, 777 F.2d 1178, 1186-87 (7th Cir. 1985) (adopting *Fairfax* rule) (holding that "unless jurisdiction is retained [a] settlement agreement requires an independent basis of federal jurisdiction in order to be enforceable in federal rather than state court"). *But see Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir.) (finding subject matter jurisdiction over a post-dismissal action to enforce a settlement agreement, by virtue of a district court's "inherent power to enforce settlement agreements entered into in settlement of litigation pending before [it]"), *cert. denied*, 429 U.S. 862, 97 S.Ct. 165, 50 L.Ed.2d 140 (1976).

A federal district court is a court of limited jurisdiction, and the burden of establishing jurisdiction is on the party claiming it. *See McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-83, 56 S.Ct. 780, 781-82, 80 L.Ed. 1135 (1936). Dr. Langley argues that the district court had subject matter jurisdiction over the action to enforce the settlement agreement on the following grounds: (a) her motion to enforce the settlement agreement is an action arising under Title VII; and (b) federal courts have the inherent power to enforce agreements settling litigation pending before them. Both grounds are insufficient to support subject matter jurisdiction.

Dr. Langley cites *E.E.O.C. v. Safeway Stores, Inc.*, 714 F.2d 567 (5th Cir.1983), *cert. denied*, 467 U.S. 1204, 104 S.Ct. 2384, 81 L.Ed.2d 343 (1984), for the proposition that an

action to enforce an agreement settling a Title VII suit is an action arising under federal law. In *Safeway*, we held that "federal courts have jurisdiction over suits to enforce Title VII *conciliation* agreements." *Id.* at 571-72 (emphasis added). We reasoned that "[a]though Title VII does not explicitly provide the EEOC with the authority to seek enforcement of conciliation agreements in federal court, it would be antithetical to Congress' strong commitment to the conciliatory process if there were no federal forum in the EEOC could enforce such agreements." *Id.* at 572. We further noted that Congress' commitment to the conciliatory process was evidenced by its creation of the EEOC and establishment of an "administrative structure whereby the agency 'would have an opportunity to settle disputes through conference, *conciliation*, and persuasion *before the aggrieved party was permitted to file a lawsuit.*' " *Id.* (emphasis added). In our case, Dr. Langley does not offer, and we cannot find, any indication that Congress has established an administrative structure evidencing its intent to provide a federal forum for private parties to enforce settlement agreements ending discrimination disputes after a lawsuit has been filed. Consequently, our decision in *Safeway* is not on point. Moreover, we have found no authority applying the holding in *Safeway* to non-administrative settlements of Title VII suits. We therefore reject Dr. Langley's first basis for showing subject matter jurisdiction.

Langley next argues that even if the action to enforce the settlement agreement was not an action arising under Title VII, subject matter jurisdiction nevertheless existed because federal district courts have "the inherent power . . . to enforce an agreement settling litigation pending

before the court." *In re Corrugated Container Antitrust Litigation*, 752 F.2d 137, 142 (5th Cir.) (citing *Massachusetts Casualty Ins. Co. v. Forman*, 469 F.2d 259 (5th Cir.1972); *Cia Anon Venezolana de Navegacion v. Harris*, 374 F.2d 33 (5th Cir.1967)), *cert. denied*, 473 U.S. 911, 105 S.Ct. 3536, 87 L.Ed.2d 660 (1985); *see Aro Corp.*, 531 F.2d at 1371. In *Corrugated*, the plaintiffs sought to enforce an agreement which had settled litigation before the district court. The plaintiffs brought the action to enforce the settlement agreement after the prior suit had been dismissed. Because the district court had approved of and incorporated the terms of the settlement agreement in its consent decree, we had no cause to decide the issue whether a district court need have federal jurisdiction over an action to enforce a settlement agreement independent of the matter settled by the agreement, where the agreement was neither approved nor incorporated by the court.[6] We are presented squarely with the issue today.

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[6] We therefore declined to take sides in the jurisdictional debate spawned by *Aro Corp.* and *Fairfax*. *See Corrugated*, 752 F.2d at 142 ("It is unnecessary for us to approve the result reached by the Fourth Circuit [*Fairfax*], which may be contrary to Fifth Circuit opinions concerning the inherent power of a district court to enforce an agreement settling litigation pending before the court."). Although the Supreme Court has yet to resolve this inter-circuit conflict, it has decided recently to review a decision adopting the *Aro Corp.* view. *See Kokkenen v. Guardian Life Ins. Co. of America*, 993 F.2d 883 (9th Cir. 1993) (holding that a district court's inherent power summarily to enforce a settlement agreement concerning an action before it confers subject matter jurisdiction to enforce a post-dismissal action to enforce such an agreement), *cert. granted*, ___ U.S. ___, 114 S.Ct. 341, 126 L.Ed.2d 306 (1993).

In deciding that issue, we initially note that Dr. Langley's action to enforce the settlement agreement is tantamount to an action for "breach of contract remediable under state but not federal law, and therefore only in state court since the parties are not of diverse citizenship." *McCall-Bey*, 777 F.2d at 1185 (citing *Fairfax*, 571 F.2d at 1303). We therefore must decide whether to accept Dr. Langley's argument that a federal district court has subject matter jurisdiction over a breach of contract action "merely by virtue of having had jurisdiction over the case that was settled." *Id.*; *see also Fairfax*, 571 F.2d at 1304 (referring to this ground for upholding federal jurisdiction as "derivative" jurisdiction). Our resolution of this question is guided by the Seventh Circuit's persuasive reasoning in *McCall-Bey*, where the court stated:

> If we follow the ascent far enough, countless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral. A dispute over the meaning of an agreement is "collateral" for this purpose when it is not the kind of dispute that is likely to require for its just resolution the special independence, experience, and perspective that federal courts may be thought to bring to the decision of certain cases. A dispute between residents of the same state over the meaning of their contract is not of that kind. Such disputes are traditionally, uncontroversially, and exclusively with the jurisdiction of state courts.

McCall-Bey, 777 F.2d at 1186 (citation and attribution omitted). We further note that Dr. Langley's argument in favor of "derivative" jurisdiction knows no time limit. As the Seventh Circuit observed:

> If 20 years from now the plaintiff complains that the defendants have violated a term of the settlement agreement, the judge would, in the plaintiff's view have jurisdiction to entertain the complaint – and this regardless of whether the district judge intended to retain jurisdiction. No statute confers such a jurisdiction and we hesitate to use so formless a concept as inherent power to give the federal courts an indefinite jurisdiction over disputes in which the federal interest may be nonexistent.

Id. at 1187.[7] For these reasons, we reject the view espoused by the Sixth Circuit in *Aro*, in favor of the position taken by the Fourth Circuit in *Fairfax* and by the Seventh Circuit in *McCall-Bey*. Accordingly, we hold that once a court dismisses an action with prejudice because of a settlement agreement, and the agreement is neither approved of nor incorporated by the court in its decree or order and the court does not indicate any intention to retain jurisdiction, an action to enforce the settlement agreement requires federal jurisdiction independent of the action that was settled.

Although we have speculated that *Fairfax* may be contrary to our prior decisions in *Massachusetts Casualty*

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[7] We note that over two years passed between the time the district court dismissed Dr. Langley's initial Title VII suit and Dr. Langley filed her motion to enforce the settlement agreement.

and *Cia Anon, see Corrugated*, 752 F.2d at 142 & n. 9 (dicta), our reading of those cases reveals no conflict with the rule we adopt today. For example, in *Massachusetts Casualty*, the plaintiff sought to enforce a settlement agreement entered into to end litigation *then pending* before the district court. In other words, unlike the case before us today, the motion to enforce the settlement agreement was filed *before* the district court dismissed the case. We therefore had no cause to consider the issue whether jurisdiction existed over the settlement agreement when we held that "[a] trial court has the power to summarily enforce a settlement agreement entered into by litigants *while the litigation is pending before it.*" *Id.*, 469 F.2d at 260 (citing *Cia Anon*, 374 F.2d at 35). Our prior decisions in *Massachusetts Casualty* and *Cia Anon* are therefore distinguishable. *See Fairfax*, 571 F.2d at 134 (stating that the inherent power of a district court to enforce settlement agreements, as set forth in cases such as *Massachusetts Casualty* and *Cia Anon*, "presupposes [rather than confers] . . . federal jurisdiction over the case or controversy"). Accordingly, because the district court lacked subject matter jurisdiction over the settlement agreement, we vacate the district court's determination that JSU breached the agreement and dismiss Dr. Langley's suit to enforce the agreement.

2. Clear Error

JSU also contends that the district court clearly erred in finding that JSU breached the terms and conditions of the settlement agreement. Because we vacate the district court's determination that JSU breached the agreement and dismiss Dr. Langley's suit to enforce the agreement,

we need not address whether the district court's underlying findings of fact were clearly erroneous.

B Proof Methodology

In her cross-appeal, Dr. Langley contends that the record contains direct evidence that racial animus motivated in part the employment decisions affecting her. "When a plaintiff presents credible direct evidence that discriminatory animus in part motivated or was substantial factor in the contested employment action, the burden of proof shifts to the employer to establish by a preponderance of the evidence that the same decision would have been made regardless of the forbidden factor." *Brown v. East Mississippi Elec. Power Ass'n*, 989 F.2d 858, 861 (5th Cir.1993) (citing *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989)). Langley argues that the district court's failure to use the "motivating factor" proof methodology justifies a remand.

Our thorough review of the record reveals no direct evidence that racial animus motivated in part the employment decisions affecting Dr. Langley. At most, the record shows that Dr. Langley's supervisors were race-conscious to the extent that some felt uncomfortable with, and possibly even resented, Dr. Langley's presence at JSU, an historically black institution. For example, Dr. Langley testified that Dr. Hall told her that "she doesn't see why black students feel that they need to have white advisors" and that "black people are overlooked at Jackson State to give white faculty more rights." Another white faculty member, Dr. Marie Roos, testified that Dr. Hall had indicated to her that Dr. Hall would prefer an

all-black institution so there would be less competition between blacks and whites. Although these comments are indicative of race-consciousness, they do not constitute direct evidence that discriminatory animus motivated in part any of the decisions affecting Dr. Langley. *Cf. Young v. City of Houston, Tex.*, 906 F.2d 177, 182 (5th Cir.1990) (holding that an employer's use of the terms "white tokens" and "white faggots" did not necessarily constitute direct evidence that racial animus motivated in part an employment decision). To shift the burden on the employer to show by a preponderance of the evidence that it would have made the same decision even without the forbidden factor, the employee must show that "the employer *actually relied on* [the forbidden factor] in making its decision." *Price Waterhouse*, 490 U.S. at 250, 109 S.Ct. at 1891 (emphasis added). Dr. Langley failed to make this showing. Because no direct evidence motivating racial animus existed, the district court properly refused to apply the "motivating factor" proof methodology to Dr. Langley's claims. We therefore reject Dr. Langley's argument and affirm the district court's findings that she failed to prove discrimination or retaliation

III

For the foregoing reasons, we AFFIRM the district court's findings that Langley failed to prove discrimination based upon her race or retaliation for bringing a prior discrimination suit. However, because of the lack of subject matter jurisdiction, we VACATE the district court's determination that JSU breached the settlement agreement, and DISMISS Dr. Langley's suit to enforce the agreement.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION NO. J86-0206(L)

DR. BETTYE R. LANGLEY

PLAINTIFF

VS.

JACKSON STATE UNIVERSITY AND
DR. JAMES A. HEFNER, IN HIS
OFFICIAL CAPACITY

DEFENDANTS

PRELIMINARY INJUNCTION

(Filed Mar 20 1986)

This cause came before this Court on the prayer for a preliminary injunction as set forth in the Verified Complaint of the plaintiff. In an evidentiary hearing held on 19 and 20 March 1986, this Court heard testimony and considered documentary evidence submitted in support of and in opposition to the prayer for relief. At the conclusion of proof, and following oral argument by counsel for all parties, the Court rendered its bench opinion, the findings and conclusions of which are incorporated herein by reference. Pursuant to the Court's opinion, it is, therefore,

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That this Court has jurisdiction of this cause, and in particular, plaintiff's claim for a preliminary injunction pursuant to 42 U.S.C. §2000e and 28 U.S.C. §§1331 and

1343 (3) and (4). Specifically, this Court has jurisdiction to consider plaintiff's prayer for a preliminary injunction, even though a right-to-sue letter has not yet issued from the United States Equal Employment Opportunity Commission, under the authority of *Drew vs. Liberty Mutual Insurance Company*, 480 F.2d 69, (5th Cir. 1973), cert. den'd 417 U.S. 935 (1974).

2. That the plaintiff has established the likelihood that she will prevail on the merits of her retaliation complaint against the defendants, that she will suffer irreparable injury if she is not permitted to conduct her child abuse workshop, that the degree of harm that may result from the granting of the preliminary injunction as prayed for will be outweighed by the degree of harm to the plaintiff if the injunction does not issue, and that issuance of the preliminary injunction would be in the public interest.

3. That Jackson State University and Dr. James A. Hefner, president of Jackson State University, in his official capacity, and their agents and employees be and are hereby preliminarily enjoined to permit the plaintiff, Dr. Bettye R. Langley to conduct her forty-five hour child abuse workshop, to begin on 21 March 1986, at 4:00 p.m. and continuing through 19 April 1986, as set forth in the Coordination/Budget Form for Academic Credit submitted by Dr. Langley on 17 March 1986 and bearing date of 10 March 1986, which was admitted into evidence in these proceedings. There shall be no interference or other impairment by the defendants with Dr. Langley's conducting said child abuse workshop. Provided, that in the event an insufficient number of students appear to make the child abuse workshop sufficiently revenue generating

to bear its own costs, the defendants may nonetheless decline to allow the workshop to go forward unless Dr. Langley chooses to perform the workshop for a sufficiently reduced compensation to herself to permit the workshop to break even financially.

4. That this preliminary injunction be and shall remain in effect pending further order of this Court.

SO ORDERED, ADJUDGED AND DECRFED, this 20th day of March, 1986.

/s/ Tom S. Lee
TOM S. LEE
UNITED STATES
DISTRICT JUDGE

Submitted by:

/s/ Charles H. Ramberg
CHARLES H. RAMBERG, ATTORNEY
FOR PLAINTIFF

Defendant's attorney approved
as to form by phone call
/s/ GL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY	)	CIVIL
VERSUS	)	ACTION NO.
	)	J86-0206(L)
JACKSON STATE UNIVERSITY, ET AL	)	

ORDER OF DISMISSAL

(Filed Aug. 12, 1987)

All parties having agreed to and announced to the Court a settlement of this case, and the Court being desirous that this matter be finally closed on its docket,

IT IS ORDERED that this case is hereby dismissed with prejudice as to all parties. If any party fails to consummate this settlement within twenty days, any aggrieved party may reopen the case for enforcement of the settlement agreement within ten days, and if successful, all additional attorneys' fees and costs from this date shall be awarded such aggrieved party or parties against the party failing to consummate the agreement.

THIS the 10th day of August, 1987.

/s/ John M. Roper
UNITED STATES
MAGISTRATE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY, Plaintiff, v. JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER, in His Official Capacity, Defendants.	)	CIVIL ACTION NO. J86-0206(L)

STIPULATION AND ORDER FOR DISMISSAL

(Filed Sep 9 1987)

BY STIPULATION of the undersigned representatives for all parties in this action, pursuant to Rule 41 of the Federal Rules of Civil Procedure, it is hereby finally ordered, adjudged and decreed that the action is dismissed, with prejudice, with the parties to bear their own costs and attorney fees.

SO ORDERED this the 8th day of September, 1987.

/s/ Tom S. Lee
HONORABLE TOM S. LEE

SO STIPULATED this the 8th day of September, 1987.

/s/ John L. Maxey, II
JOHN L. MAXEY, II
Cupit & Maxey
Post Office Box 22666
Jackson, Mississippi 39205
(601) 355-1553
Counsel for Plaintiff

/s/ Kenneth E. Milam
KENNETH E. MILAM
R. PEPPER CRUTCHER, JR.
Miller, Milam & Moeller
Post Office Box 2366
Jackson, Mississippi
39225-2366
(601) 948-3131

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTY [sic] R. LANGLEY — PLAINTIFF

vs. — CIVIL ACTION, NO. J86-0206(L)

JACKSON STATE UNIVERSITY and
DR JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY — DEFENDANTS

CONSOLIDATED WITH
DR. BETTY [sic] R. LANGLEY — PLAINTIFF

vs. — CIVIL ACTION, NO. J90-0038(B)

JACKSON STATE UNIVERSITY and
DR. JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY — DEFENDANTS

ORDER OF CONSOLIDATION

(Filed April 4, 1990)

This cause having come on to be considered on the Motion of the Plaintiff to Consolidate two actions, Dr. Betty [sic] R. Langley vs. Jackson State University and Dr. James A. Hefner, in his Official Capacity, Civil Action, No. J86-0206(L) (wherein Plaintiff seeks to enforce a Settlement Agreement entered in said action, whereupon said action was dismissed and closed) and Dr. Betty [sic] R. Langley vs. Jackson State University and Dr. James A. Hefner, in his Official Capacity, Civil Action, No. J90-0038(B) (wherein Plaintiff bases her claims of discrimination in a separate action pursuant to charges purportedly exhausted through the Equal Employment Opportunity Commission), and the Court being fully

advised in the premised finds that said Motion is well taken and should be sustained.

IT IS THEREFORE ORDERED that Dr. Betty [sic] R. Langley vs. Jackson State University and Dr. James A. Hefner, in his Official Capacity, Civil Action, No. J-86-0206(L) and Betty [sic] R. Langley vs. Jackson State University and Dr. James A. Hefner in his Official Capacity, Civil Action, No. J90-0038(B) be and hereby are consolidated only for those purposes hereinafter defined, being that Civil Action, No. J86-0206(L) hereby is reopened for the purposes of adjudicating Plaintiff's Verified Motion to Enforce Settlement Agreement and that all pleadings and other papers be filed only in Civil Action, No. J86-0206(L).

ORDERED this the 5 day of April, 1990

/s/ John R. Countiss III
UNITED STATES
MAGISTRATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY — PLAINTIFF

vs. — CIVIL ACTION, NO. J86-0206(L)

JACKSON STATE UNIVERSITY and
JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY — DEFENDANTS

CONSOLIDATED WITH
DR. BETTYE R. LANGLEY — PLAINTIFF

vs. — CIVIL ACTION, NO. J90-0038(B)

JACKSON STATE UNIVERSITY and
JAMES A. HEFNER IN HIS
OFFICIAL CAPACITY — DEFENDANTS

MEMORANDUM OPINION AND ORDER

(Filed April 13, 1992)

In 1977, plaintiff Bettye R. Langley, a white female, became employed by Jackson State University, a predominately black institution in Jackson, Mississippi, as a professor of elementary and early childhood education in the University's School of Education, a division of the Department of Curriculum and Instruction. Dr. Langley, who holds a Ph.D degree in elementary education with emphasis in early childhood and a minor in administration, has been continuously employed by Jackson State since that time and is now a tenured full professor. In October 1984, Dr. Langley filed a charge of discrimination against Jackson State with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, alleging that she

was receiving unequal pay based on her sex and race and that she was being subjected to a hostile racial environment. In January 1985, plaintiff amended her charge of discrimination to include an allegation that she was not promoted to full professor because of her race and sex. A determination letter was issued in connection with that EEOC charge in June of 1986. Plaintiff filed a second charge of discrimination against the University in March 1986 in which she complained that she had been denied the opportunity to teach a workshop on child abuse on account of her race and in retaliation for her previous EEOC charge. About the same time, on March 19, 1986, Dr. Langley filed suit against Jackson State in this court incorporating the substance of her EEOC charge and requesting, *inter alia*, that defendant be enjoined to permit her to conduct the workshop planned and scheduled for that month. A hearing was held before this court which enjoined Jackson State to permit plaintiff to conduct the workshop without interference. Thereafter, in September 1987, the parties entered into a settlement agreement, and the previous lawsuit was dismissed by agreement of the parties.

In October 1989, plaintiff filed a charge of discrimination with the EEOC, in which she alleged that Jackson State was retaliating against her for having filed previous EEOC charges and litigation against the University, was violating the terms of her previous settlement agreement and was subjecting her to a hostile work environment. A notice of right to sue was issued on October 26, 1989, following which Dr. Langley, in January 1990 instituted

the present action charging violations by defendant[1] of Titles VI and VII of the Civil Rights Act, 42 U.S.C. §§ 2000d[2] and 2000e, respectively, and of the Fourteenth Amendment to the United States Constitution. She alleged in particular that defendant has discriminated against her on the basis of her race and in retaliation for her previously filed EEOC charges and Title VII action against the University. She further charged that defendant was violating the terms and conditions of the settlement agreement executed[3] between the parties in connection with the earlier filed lawsuit. The case was tried to the court sitting without a jury and upon thorough and careful consideration of the evidence presented, both testimonial and documentary, the court makes the following findings and conclusions.

Dr. Langley's specific complaints in this action relate to a number of topics or areas in which she claims she has been the victim of retaliation and discrimination. Generally, Dr. Langley testified that after she concluded her litigation with Jackson State in September of 1987, she returned to the University and was immediately verbally

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[1] Plaintiff also named as a nominal defendant the then president of Jackson State, Dr. James Hefner. Dr. Herman Smith, who succeeded Dr. Hefner, has since been substituted as a defendant.

[2] Title VI provides that:

> No person in the Unived [sic] States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial asistance [sic].

It is stipulated that Jackson State is a recipient of federal financial assistance and is a covered entity subject to Title VI.

attacked by her new academic dean, Dr. Johnnie Mills, a black female, who made it known in no uncertain terms that she resented plaintiff's litigious nature, that she did not like plaintiff and did not wish to work with her, and that she felt that plaintiff and she would be better off if plaintiff worked under a white dean. Relations with Dr. Mills, plaintiff indicated, have never improved. Plaintiff further testified that Dr. Anita Hall, the chairperson of her department, was also racially hostile toward her, continually remarking that whites did not belong at Jackson State and undermining plaintiff's efforts to be an affective instructor and advisor at every turn. These administrators, and others, according to plaintiff, have harassed her and subjected her to disparate treatment because of her race and in retaliation for her earlier litigation against the school, and in violation of her settlement agreement, by constantly requiring her to teach an overload, refusing to timely pay her for her work, refusing to approve her workshops in accordance with University policy, denying her merit pay increases, refusing to provide her with office space, furniture and telephone service, assigning her to double registration duties, and denying her sabbatical leave and travel expenses. Additionally, plaintiff alleges that they have discouraged students from using her as a faculty advisor, implemented policies and practices to thwart plaintiff's advisement efforts and have delayed the approval of the student forms of students she advises. Defendant denies each of plaintiff's charges.

Dr. Langley teaches in the doctoral program in the School of Education, a division of the Department of Curriculum and Instruction at Jackson State, and also by

virtue of her 1987 settlement agreement with the University serves as the coordinator of the Division of Continuing Education for the School of Education. Since 1987, as well as before, plaintiff's supervisors at Jackson State have been black. In 1987, Dr. Langley's department chairperson was Dr. William Rush, a black male. Dr. Anita Hill, a black female, became acting chairperson of the department in 1988, and permanent chairperson in 1989. The dean of the School of Education since the fall semester of 1987 has been Dr. Johnnie Mills, a black female. Dr. Leslie McLemore, a black male, was for the greater part of the time at issue in this case, dean of the graduate school.[3] The vice-president of academic affairs for the University in 1987 was Dr. Frank Black, a black male, who was followed by Dr. Everette Witherspoon, a black male. In 1989, Dr. Carrol Surles, a black female, assumed the position, and in 1990, Dr. Witherspoon again occupied that office. The title of that office changed in 1991, and the present executive to the president is Dr. Dennis Holloway, a black male. Dr. James Hefner, a black male, was formerly the president of Jackson State, and was succeeded by Dr. Herman Smith, a black male. There are at Jackson State, according to the unrefuted testimony of plaintiff, only two white administrators: the registrar and the dean of the Division of Continuing Education.

In the School of Education, there are forty-eight full-time employees, of whom approximately twelve are white. In plaintiff's department, there are twelve faculty members, eight black and four white, including plaintiff.

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[3] Dr. McLemore is now the director of the University Center.

Course Overload

One of plaintiff's primary complaints in this action is that since the termination of her prior litigation with Jackson State, she has been required to teach an overload of classes in violation of University policy and her settlement agreement. She attributes the alleged assignment of overloads to retaliation and racial discrimination by her supervisors at Jackson State, and seeks to recover compensation for overloads that she taught for which she contends she was not paid.

Defendant acknowledges that under the terms of her settlement agreement, Dr. Langley was to serve as the coordinator of continuing education for the School of Education and was for her service in that capacity to be granted a twenty-five percent reduction of her regular teaching load. The disagreement between the parties relates to the issue of what Dr. Langley's regular teaching load is supposed to be. According to Dr. Langley, as a member of the doctoral faculty,[4] she, like every member of the doctoral faculty, is required to carry a course load of nine hours per semester. In contract [sic], the course load for regular graduate faculty and undergraduate faculty is twelve to fifteen hours. Plaintiff thus reasons that her couse [sic] load, after she is accorded the twenty-five percent reduction for her continuing education duties, should be six hours, but contends that defendant has consistently assigned her more than six hours. Defendant

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[4] Jackson State offers two doctorate degrees, which are in early childhood education and administration and supervision.

agrees that plaintiff is entitled to a reduction for her continuing education activities, but asserts that her regular course load is not nine hours, as she claims, but rather is twelve hours. Defendant maintains that no distinction is made at the University between graduate faculty and "doctoral faculty" in terms of the course load such faculty members are required to carry. In fact, according to defendant, Jackson State does not have a "doctoral faculty"; only graduate and undergraduate faculty.

Initially, the court would observe that defendant's persistent refusal in this case to acknowledge the existence of "doctoral faculty" *per se* is inexplicable. It appears, in the court's view, to be nothing more than a question of semantics. The Jackson State faculty handbook refers only to undergraduate and graduate faculty and makes no mention of a doctoral faculty. However, Dr. Johnnie Mills, Dean of the School of Education, acknowledged in her testimony that the phrase "doctoral faculty" is at least descriptive of a group of faculty which she described as "core faculty for the doctoral program," a group which she acknowledged included Dr. Langley. Nevertheless, Dr. Mills was adamant in her testimony that there is not a "doctoral faculty" at Jackson State; just graduate faculty and undergraduate faculty.[5] Dr. Leslie McLemore, dean of the graduate school, also denied there

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[5] This position has been espoused by Dr. Mills since she arrived at Jackson State in the fall semester of 1987. Dr. Langley testified that when she first advised Dr. Mills that she was on the doctoral faculty, Dr. Mills responded that there was not a doctoral faculty; there were only graduate and undergraduate faculties.

had "ever been such an animal as doctoral faculty," stating that some people refer to themselves as members of the doctoral faculty, but that there is no "official" doctoral faculty at Jackson State. Despite his testimony, though, in agenda and minutes emanating from Dr. McLemore's office, reference is specifically made to the "doctoral faculty." In particular, an "agenda" for a September 1989 meeting, as well as the minutes generated as a result of that meeting, refer specifically to "Meeting with Doctoral Faculty." Additionally, minutes of a doctoral admissions committee meeting in September 1986 are replete with references to the "doctoral program," "doctoral" committee members, "doctoral program core faculty members," and "doctoral program core faculty." A 1987 summary report provided to Dr. William Rush, plaintiff's then department chairperson, listed the members of the "doctoral faculty" to include Dr. Langley and recited that "The composition of this committee was mandated by the vice-president of academic affairs." A January 25, 1988 memorandum from Dr. Frank Black informed of an upcoming "Doctoral Core Faculty Meeting." And on March 11, 1988, following that meeting, Dr. Frank Black advised Dr. Rush of recommendations formulated by the "Doctoral Program Faculty." An October 7, 1988 memorandum from Dr. Witherspoon to President Hefner referenced an attached copy of the minutes "of the meeting McLemore had with the doctoral faculty. In reviewing these minutes, it appears that the graduate school and the doctoral faculty. . . . " Moreover, plaintiff's settlement agreement with the University preserves plaintiff's present position as a tenured professor "officially designated to teach in the School of Education Doctoral Program."

In the court's view, there is no distinction of any significance between "doctoral faculty" and "core faculty for the doctoral program." It is clear, in the court's view, that there is, if not an "official" doctoral faculty, certainly a *de facto* one. The issue, then, is whether, as plaintiff claims, the course load for the doctoral faculty was less than the course load for regular graduate faculty, and in the court's opinion, the proof supports Dr. Langley's position that the course load for the "doctoral faculty," or to use Dr. Mills' terminology, "the core faculty for the doctoral program," was nine hours. The faculty handbook provides that:

> A full-time workload . . . for a Jackson State University faculty member is twelve hours of teaching per semester combined with the other duties required by good academic citizenship.

However, the minutes of the September 1989 meeting of the doctoral faculty held by Dr. McLemore show that Dr. Langley questioned Dr. McLemore concerning what the course load for doctoral faculty should be. According to the minutes, "Dr. McLemore stated that it was 9 hours and there is documentation to that effect." Though Dr. McLemore testified at trial that he had been merely expressing his opinion of what the course load for doctoral faculty **should be,** and not that the course load was in fact nine hours, the minutes reflect otherwise. Further, in a response prepared by Dr. Mills to complaints made by Dr. Langley, including complaints about being assigned a course overload, Dr. Mills stated that "Dr. Langley is expected to teach six hours," after the twenty-

five percent reduction from her course load for her continuing education duties. Dr. Mills testified that in making this statement, she had taken into consideration the fact that Dr. Langley, without exception, directed a sufficient number of doctoral dissertations each semester to entitle her to a three-hour course load reduction[6] and that what she meant by the statement was that Dr. Langley was expected to **teach** six hours in the classroom. No mention, however, was made by Dr. Mills in her response indicating that any course load reduction for dissertation direction was taken into consideration in preparing that response. Dr. Mills' explanation appears to the court disingenuous at best.[7]

Having determined that the appropriate course load for doctoral faculty at the pertinent times was nine hours, the question becomes whether plaintiff has in fact been subjected to an overload. With respect to this issue,

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[6] The course load reduction for directing doctoral dissertations is discussed *infra*.

[7] Moreover, the court would note that Dr. Mills testified that one of the reasons she was hired by Jackson State was due to her experience with National College Accreditation (NCATE) standards and one of her missions was to secure NCATE accreditation for the doctoral program. NCATE Standards for Accreditation indicate that the teaching load for faculty working in doctoral programs should be less than that of undergraduate faculty:

> Conditions that make possible a high level of performance include reasonable faculty load. . . . This limit is lower than that established for the loads of undergraduate faculty. These policies take into account those special demands that are made on faculty who carry responsibilities for doctoral programs.

another point of contention between the parties is the appropriate course load reduction for directing doctoral dissertations. Dr. Langley testified that while she was typically assigned an overload beginning in the fall of 1987, she was usually able to resolve the problem. However, after October 1989, when she filed her most recent EEOC charge against the University, the administration changed the policy that had been in effect concerning course load reduction for directing doctoral dissertations and refused to grant her the appropriate reduction for dissertations she directed. According to Dr. Langley's testimony prior to her filing of that EEOC charge, the policy had consistently been applied to reduce the course load of faculty members who directed doctoral dissertations and/or doctoral internships one hour for each student who was enrolled in a doctoral dissertation or internship. After she filed the EEOC charge, though, the policy was suddenly changed to limit the number of hours by which the course load would be reduced to three hours, regardless of the number of doctoral dissertations a faculty member directed.

When questioned at trial concerning what she contended had been the policy or practice, Dr. Langley stated that she knew of no **written** policy which addressed the course load reduction she described, but she insisted that the policy which had always been followed was to reduce the faculty member's course load by one three-hour course for every three students, and one hour for every student up to three. Thus, Dr. Langley explained, prior to filing her EEOC complaint, if she had directed doctoral dissertations and/or internships of eight students, "that would equal two courses and you would spend your

semester instead of teaching regular classes you would spend it working with your doctoral students and their research."

Defendant asserts, in contrast to plaintiff's position, that the policy of the school is and has always been to grant a course load reduction of three hours to a faculty member who directs three or more doctoral dissertations, irrespective of whether the faculty member directed three or twenty-three dissertations. Dr. Mills explained that a greater course reduction could not feasibly be granted, given the budgetary limitations of the school:

> We wouldn't be able to maintain as a school. Our budget wouldn't allow us to do that. In fact, we would not have had enough instructors to teach the courses that needed to be taught if we had allowed that. In actuality, Dr. Langley could have ended up not ever teaching a course, just simply working with those students.

In further support of its position, defendant points to the August 1981 faculty handbook of the University, which applied during the pertinent time period, and provides:

> A three-semester hour reduction is allowed for the following positions and duties: (1) department heads, (2) *persons who direct three or more theses when the students are enrolled in thesis writing courses,* (3) persons who direct six or more graduate projects, and (5) directors of major University Institutes. A reduction of six hours for department heads who direct three or more theses is allowed.

Plaintiff's response to this provision is simply that the policy described in the handbook, which does not specifically mention doctoral dissertations, applies only to master's theses and specialist papers; it does not apply to doctoral dissertations, which involve more in depth research and a greater devotion of time and effort by the directing faculty member.

The court would observe initially that while plaintiff implied in her testimony that the course load reduction policy was "changed" by the administration in retaliation of her EEOC charge, and that it had been applied in the manner she described prior to that time, plaintiff's own testimony and exhibits belie her position. Plaintiff stated that in July 1988, there was "some question about whether [she] should be paid for the number of students that [she] chaired dissertations and specialist project papers, and [she] was asked to explain her rationale for requesting additional payment for more than three students." Though she states that she was eventually paid for her teaching load that semester, including payment for all of her dissertation and internship students,[8] similar questions arose in the summer semester of 1989. Dr. Langley took the position with the administration that she had been undercompensated since she had directed five doctoral dissertations and four doctoral internships but had been paid for only three of those students. She

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[8] While plaintiff testified that she had been paid for her work for that semester, her "Backpay Summary" which was admitted in evidence shows that she is claiming additional compensation of $4935.49 for that semester.

wrote to Dr. James Hefner on July 27, 1989 stating her position:

> The policy of the Graduate School is that three students enrolled in Dissertation or Internship is equal to one class. Therefore, the 9 students enrolled in these two classes equal a total of 3 classes.

In September 1989, Dr. Hall responded to Dr. Langley's inquiry concerning why she had not received appropriate compensation for her summer school load, with the following explanation of the handbook policy for course load reduction:

> Please note that it (the policy) does not say a reduction of three hours for every three students and pro-rated for additional students. The intent was a maximum of three semester hours for directing theses and is applicable to dissertations. There is no reference to internships, but presumably, the policy regarding student teaching is applicable. The policy states that three semester hours are allowed "faculty who are scheduled to supervise twelve to eighteen students."

Dr. Langley testified for that semester, in keeping with Dr. Hall's explanation, Dr. Hall refused to pay plaintiff for students in excess of three writing dissertations.

In an effort to evaluate the parties' positions on this matter, the court has carefully considered the testimony of the witnesses and examined the exhibits entered in evidence in this case. It is difficult, if not impossible, for the court to determine with any degree of accuracy the actual courses taught or the number of dissertations

directed and internships supervised by Dr. Langley, or any other professor, due to the disparity of information contained in the various exhibits. More specifically, there are various types of documents which purport to relate courses assigned and/or taught, including documents styled "Teaching Assignments," documents entitled "Instructor's Schedule of Classes," personnel action forms, and an exhibit prepared by plaintiff entitled "Backpay Summary" which purports to set forth the courses she taught and the dissertations, internships, etc., for which she was responsible each semester. However, with the exception of plaintiff's backpay summary and the personnel action forms (which are not comprehensive or consistent), there is no indication as to who was responsible for preparing or approving the documents or in what context they were prepared. The court suspects that the Instructor's Schedules of Classes were prepared by the instructors and the Teaching Assignments by some administrator, but that information is not apparent on the forms, and has not been the subject of testimony by any witness. Plaintiff states in her post-trial brief that many of the exhibits in evidence are not reflective of her actual teaching load or the number of dissertation and internship students she had in any given semester, and that her backpay summary must be considered to accurately reflect that information since defendant made no effort to controvert the information contained in that document. However, defendant offered in evidence its own exhibit, D-1, which it contended showed Dr. Langley's course assignments and the courses she taught, and thus implicitly defendant has challenged plaintiff's summary. The court has been provided no basis upon which to resolve

the inconsistencies among these various documents.[9] Nevertheless, and with this proviso in mind, it does appear from the evidence presented relating to the number of semester hours credited a faculty member for directing doctoral dissertations and internships that defendant's application of a policy for course load reduction has been inconsistent, not only as to Dr. Langley, but to others as well.

It appears, for example, that in the spring semester 1988, Dr. Langley was given a one-hour credit for one doctoral student; in the spring semester 1989, she received three credit hours for two students; and in the fall of 1987, she received three hours' credit for one student.[10] And notably, in the fall of 1988, i.e., prior to her EEOC charge, she was given only three credit hours for

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[9] In addition to the documents described in the text, exhibits relating to the summer semester of 1988 show that in February 1988, Dr. Langley requested of her department chair, Dr. Rush, that she be listed on the summer school schedule for ELED 799, doctoral dissertation, and ELED 687, independent study. By letter to Dr. Witherspoon in March 1988, she also requested to teach ELED 621, advanced seminar in elementary education, and ELED 706. Personnel action forms, though, show that plaintiff requested payment for ELED 621, ELED 706, ELED 799 and ELED 709. And the individual faculty assignment reports reflect that she was assigned to teach ELED 621, ELED 799, ELED 687 and ELED 709.

[10] Dr. Mills recalled that she gave plaintiff one hour for one student because even though her interpretation of the policy did not require it, she felt that plaintiff should be given some credit for her work. She further recalled that on at least one occasion, she gave plaintiff three hours for one student because she was directed to do so by Dr. Witherspoon to avoid possible legal entanglement with Dr. Langley.

four students. Similarly, in the case of Dr. Anita Hall, the exhibits reflect that she was given one credit hour for one student in the spring of 1988, and in the spring of 1990, received two hours, credit for two dissertation students; but in the spring semester of 1989, she received three credit hours for one student. The spring 1988 Instructor's Schedule of Classes of Dr. Georgia Napier, a white doctoral faculty member, indicates a credit of nine hours for nine doctoral dissertation students, there being a notation on the form that "Three doct. dissertation students equals three semester hours."[11] But in the summer semester of that same year, Dr. Napier received only three credit hours for six doctoral dissertations.[12] Another interesting revelation is that at times, doctoral dissertations and internships have been grouped for determining the

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[11] As indicated *supra*, the court suspects that this form was prepared by Dr. Napier, and the court has not been directed to an exhibit that would demonstrate that Dr. Napier was actually granted a nine-hour course load reduction for her duties in connection with these students' dissertations. This is notable for the reason that this statement by Dr. Napier on the form is the only indication of which the court has been made aware, other than the various letters prepared and offered by Dr. Langley, of a policy of granting a course-load reduction directly commensurate with the number of students for whom a faculty member directs a dissertation or internship.

[12] It further appears that plaintiff is herself unsure of what she contends the policy actually was, inasmuch as she asserts at one point that the fact that she was on one occasion given a one-hour credit for one doctoral student supports her position that the credit hours equal the number of doctoral students enrolled. Yet at the same time, she states that the policy was to grant three credit hours for three or fewer students.

number of hours for which credit will be given, such that, for example, an instructor has been granted a three-hour reduction for directing two dissertations and two internships, for a total of four doctoral students. At other times, the dissertations and internships are credited separately such that two dissertations and two internships will result in a six-hour reduction, three hours for each category of students.

The court is compelled to conclude on the evidence presented that plaintiff has not established that she was entitled to receive a greater than three-hour course load reduction for directing more than three doctoral dissertations and/or internships. It is the case that the policy contained in the handbook does not refer explicitly to doctoral dissertations, but refers instead only to "theses" and "thesis writing courses." However, even Dr. Langley appears to acknowledge that the handbook policy is not limited to masters "theses," but applies as well to specialist project papers; yet there is no explicit mention in the policy of such papers. Clearly, it cannot reasonably be concluded that dissertations were intended to be excluded from the coverage of this policy. Moreover, the record is devoid of evidence which could be viewed as establishing a recognition on the part of University administrators that the policy for doctoral dissertations varied from the policy set fourth in the handbook.

Plaintiff's objection that she was required to teach overloads is based predominately, if not exclusively, on her computation of a course load based on a misapplication of a nonexistent policy or practice of course load reduction for doctoral dissertations and internships. The court must conclude, therefore, that plaintiff has failed to

establish that she was required to teach an overload or that the teaching loads she has been assigned are suggestive of discrimination or retaliation. It follows that plaintiff has not established that she is entitled to receive additional compensation for teaching any such overloads.[13]

Plaintiff charges additionally, in connection with the subject of doctoral dissertations, that administrators – specifically Dr. Rush – have listed her dissertation students on their rolls for their personal benefit and to prevent her from being paid for those students. However, it appears from the exhibits admitted in evidence that in the summer of 1988, because Dr. Langley complained that she had been assigned an overload, "Rush took her doctoral dissertations and interns." Plaintiff suggested in her testimony that despite the fact that students may have been enrolled under other professors for their dissertations, she nevertheless worked with them and thus should have been given credit for that work. It appears to the court, though, that the decision of Dr. Langley to

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[13] The court notes that Dr. Langley's assertion that she was consistently not paid for teaching doctoral and specialist level writing courses was predicated on her erroneous computation of what her course load should have been. She also states in her post-trial brief that she was not paid for teaching these students, whereas other professors supervising independent study students were paid for those "extra services." The exhibit upon which plaintiff relies in support of this contention, however, shows only that one professor in May of 1988 received $200 for supervising the independent study of two students in RE 508. There is no indication that this independent study fell within the coverage of the course reduction policy described in the faculty handbook.

work with students who were not enrolled under her was a voluntary undertaking on her part, neither suggested nor mandated by the administration of Jackson State, and while a commendable display of dedication to her job and students, does not entitle her to relief from this court.[14]

The court would observe in connection with the topic of course overload that the faculty assignments for Dr. Langley beginning with the spring semester of 1990 do not reflect that plaintiff has been allowed the agreed upon twenty-five percent credit for her assigned duties as coordinator for continuing education. Plaintiff was and is clearly entitled to that credit and, given defendant's failure to demonstrate that plaintiff was in fact granted that

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[14] It further appears from the evidence presented that plaintiff often "volunteered" to teach additional courses, often placing her in the position of teaching what she believed – in the court's opinion, erroneously – were overloads for which she expected to be compensated. Plaintiff contends in her post-trial brief that persons in the administration essentially conspired to "set [her] up for taking on added teaching responsibilities without their permission." However, what the evidence suggests to the court is that plaintiff's volunteerism became a problem for the University due to budgetary constraints. An October 1989 letter from Dr. Carrol Surles to Dr. Mills indicates that there had been a discussion of the need for a meeting with Dr. Langley "to ensure that she is properly directed and does not assume compensable responsibility for which we are not budgeted." This letter was written after the summer semester of 1989, during which plaintiff had volunteered to teach an additional course for which she demanded additional compensation. It is not reasonable, in the court's opinion, to view this meeting as an effort to "set up" Dr. Langley, but rather to limit her apparent imposition on the school's budget.

reduction, she is entitled to compensation for her services in that capacity.

Delayed Payments

Plaintiff complains that on numerous occasions the University delayed paying her for work she performed and at times, failed to pay her altogether. She contends that this delay and failure to pay was the result of discrimination and retaliation by defendant and its agents. The primary focus of plaintiff's complaints are the summer semesters of 1988, 1989 and 1990. According to Dr. Langley, she did not receive timely payment in either of the two summers. Dr. Langley testified that one-half of a faculty member's salary for a summer semester is due on July 1 and the second half at the end of July. With respect to the summer semester of 1988, plaintiff testified that when her department chairperson in February 1988 indicated that there might be "some problems" with the summer schedule due to problems with the budget, she immediately delivered to him her handwritten request for teaching assignments. However, when assignments were issued for her department at the end of February, she was not included in the proposed course list and the courses which she had requested to teach were not included within the proposed summer budget. She made a further request of Dr. Witherspoon in March 1988 for an assignment of additional courses. In late April of 1988, Dr. Witherspoon directed the prompt submission of department budgets for the summer session, the response to which was presented on May 17, 1988 and included, for the first time, plaintiff's name and courses.

Dr. Langley was eventually scheduled to teach two courses during the summer session, one on Saturdays for six hours, and the other for six hours on Sundays. Her department chair, Dr. Rush, reassigned the courses such that both would be taught on Saturday, but Dr. Mills objected to that reassignment which necessitated a further reassignment of the courses to that which had been originally scheduled. That reassignment was not approved or course payment forms submitted until July 11, 1988 which resulted in a delay of plaintiff's receiving her salary. And according to plaintiff, even when the payment forms were submitted, her course load was incorrectly represented, which further contributed to a delay in her receiving her salary.[15]

In the court's opinion, it does not appear that the actions taken with reference to the course budgeting, course reassignment or submission of course payment forms for the summer of 1988 semester were calculated to cause delay in paying plaintiff's salary. That simply cannot reasonably be inferred from the mere fact that plaintiff's handwritten request for course assignments did not make its way into the initial budget for the summer session, and in any event, it does appear that Dr. Langley's courses were included in the official budget request submitted in response to Dr. Witherspoon's April request.

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[15] Dr. Langley further complains that she was forced to work during the summer semester of 1988 without having been issued a contract, despite having requested that she be issued one. There is no suggestion, however, of any adverse consequence as a result of her having no written contract.

Moreover, though plaintiff appears to have found objectionable Dr. Mills' reassignment of her classes, or at least the timing involved in that reassignment, it does not seem that Dr. Mills was improperly motivated in her actions or that she did not promptly undertake to have the classes reassigned.[16] Moreover, the evidence demonstrates that the "errors" concerning her course load, which plaintiff claims appeared on the course payment forms, related to the number of students enrolled in dissertations, internships and independent study courses and the credit she was to receive for her work with those students, as reflected by correspondence form [sic] Dr. Witherspoon asking that Dr. Langley explain her rationale for requesting additional compensation for additional students. Though ultimately in August 1988, it was recommended that Dr. Langley be paid and she was in fact paid the amounts which she claimed were due her, it seems that any delay attributed to this inquiry was based on legitimate questions by University administrators concerning plaintiff's compensable course load.

Plaintiff contends that she experienced similar problems receiving timely payment for her services in the summer of 1989, and indeed, she claims via her backpay summary that she was never fully compensated for her work that summer. It is most difficult to discern from the documentary evidence what courses plaintiff was

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[16] In fact, Dr. Mills on June 21, apparently as soon as it came to her attention that Dr. Rush had rescheduled Dr. Langley's classes, insisted that "the classes be conducted at the time they were approved or that they be offered on any alternate days. By no means should an instructor teach twelve hours per day."

assigned and taught during the summer of 1989 and the courses for which she received payment of claims, the courses for which payment was delayed and the courses which she claims not to have been compensated. In a letter to Dr. Hefner dated July 27, 1989, plaintiff stated that she had been attempting without success to secure payment for courses she had been assigned that summer. She stated in that letter that she was teaching three regular courses, ELED 602 and 621, Advanced Seminar in Early Childhood Education and Advanced Seminar in Elementary Education, and ELED 563, Problems and Issues in Science. Additionally, she stated that she was directing five doctoral dissertations and four doctoral internships. Dr. Langley indicated in her letter to Dr. Hefner that she had been paid properly at the end of June 1989 for teaching two courses and had received partial payment for a third course. Plaintiff wrote to Dr. Anita Hall on September 15, 1989 complaining that she had not been paid the full amount of salary due her for the summer session, stating that she had received, as of July 31, 1989, the correct salary for three of the courses she taught during summer school: ELED 621, ELED 602 and ELED 568 [sic]. She stated, additionally that at the end of August 1989, she had received payment for an additional two courses. She stated, however, that she had not been properly paid for the number of students enrolled under her for doctoral dissertations and internships, and that consequently, she was entitled to compensation for an additional course.

In this action, Dr. Langley appears to contend that she was never paid for ELED 602 and ELED 621. However, she stated in correspondence to Dr. Hefner and to

Dr. Hall during the summer and fall of 1989 that she had in fact been paid for the three courses she taught,[17] and the court therefore rejects plaintiff's claim that she was "mistreated" by virtue of the withholding of those payments or that she is now entitled to such payment. Regarding her claim that she was not timely or fully paid for the dissertation and internship students for which she was responsible in the summer semester of 1989, the proof does show that there was a delay in securing approval of payment for those students. That, however, was due to a question of documentation: plaintiff's supervisors questioned whether she in fact had the number of students she claimed, for she had failed to submit the necessary documentation to substantiate her enrollment. There was further a disagreement between plaintiff and her supervisors as to the amount of credit to which she was entitled for those students. Plaintiff claimed that she was entitled to nine hours credit, or three courses, for her nine students in dissertations and internships whereas defendants, it seems, claimed she was entitled to only six credit hours: three hours for her five dissertation students and three hours for her doctoral interns. Ultimately,

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[17] Plaintiff states in her post-trial brief that the personnel action forms admitted in evidence in connection with the ELED 602 and 621 courses were never signed by all of the necessary parties, and further that no personnel action form was ever prepared for the ELED 563 course she taught, and she claims that she was never paid for those courses. Though the court has not been directed to a completed personnel action form for these courses, the fact that plaintiff advised administrators at the time that she had been paid for these courses belies her present claim. The fact that no such forms have been submitted does not mean that they do not exist.

defendant paid plaintiff for two courses, consistent with the course load reduction policy in the handbook. The court concludes, having fully and carefully considered the evidence on the issue, that plaintiff has been fully compensated for the work she performed in the summer of 1989 and that the delay in paying her for the dissertation and internship students was justified under the circumstances.

Plaintiff now asserts that in addition to three classes she taught, and the doctoral dissertation and internship students she directed, she also taught nine independent study students in two courses, ELED 587, and ELED 687, for which she was never compensated. However, there is no documentation of any sort, other than plaintiff's back-pay summary, which reflects that these courses were assigned or taught. Indeed, in correspondence with University officials prepared during and immediately following that summer session in which plaintiff repeatedly demanded additional payment for courses, she never mentioned any such courses. Her letters to Dr. Hefner and Dr. Hall insisting on additional compensation and listing the courses she was assigned and teaching did not include even a hint that she was teaching ELED 587 and ELED 687. Thus, there is no basis for crediting plaintiff's claim that she is entitled to compensation for those courses.

Plaintiff claims that in the summer of 1990, she again experienced problems in receiving timely payment of her salary. The personnel action form prepared and approved for plaintiff for that summer semester shows that she received payment for three courses: EDCI 621, EDCI 587/687, and EDCI 704/799. She maintains that while

defendant correctly credited her three hours for ELED 621, defendant refused to give her the appropriate credit for the additional courses, arguing that defendant improperly combined ELED 587 and 687, and ELED 704 and 799. Thus, according to plaintiff, she was entitled to payment for five separate courses for that semester yet received payment for only three. In the court's opinion, however, plaintiff has failed to demonstrate that the grouping of these courses was inappropriate. The evidence presented by defendant shows that courses which contain the same course content are at times combined or grouped. And while plaintiff states in her brief that EDCI 587 and EDCI 687 are not the same course and differ significantly in terms of the student work load and the amount of professor involvement, she has offered no proof in support of this assertion. Further, with respect to the dissertation and internship courses, the court has already observed the inconsistent treatment given those courses: sometimes they are combined and sometimes they are not. But that is true not only in the case of Dr. Langley. The court concludes that plaintiff's complaint with reference to her course load and payment for the summer of 1989 must fail.

Plaintiff finally asserts, under the subject heading delayed payments, that she was never approved for payment for services rendered prior to the completion of those services and indeed was often forced to wait weeks or months to be paid, whereas "some" black professors were paid before the end of their services. The court has reviewed the exhibits cited by plaintiff in support of her position, and finds that while "some" black professors were in fact paid prior to the date a particular service was

to have concluded, other black professors were treated the same as plaintiff: they had to wait for payment. For example, Dr. ReJohnna Brown, a black instructor, was approved for payment on June 13, 1989 for work ending May 26, 1989. Dr. Earl Leggett, another black instructor, was approved on June 1, 1989 for work ending on May 27, 1989 after a second request for payment was made. And for services ending on May 20, 1988, Dr. Anita Hall was not approved for payment until June 17, 1988. Plaintiff's claim in this regard is without merit.

Workshops

Workshops, which are short, intensive courses, are utilized at Jackson State, as at other universities. Professors at Jackson State are limited to one credit bearing workshop through the Division of Continuing Education per semester, or three during the summer term for a faculty member who is not under contract for summer school. A faculty member wishing to conduct a workshop recruits her own students for those workshops, and is required to secure prior approval by her department chairperson and academic dean through the submission of a coordination budget form, which describes that nature of the workshop, the personnel who will participate and the budget. Plaintiff asserts that prior to filing her earlier EEOC charges against Jackson State, she was encouraged by the administration to offer workshops each semester, in part because workshops were an effective tool for recruiting students into degree programs at the University and generated income for the University. However, after she filed her charges, her supervisors, and particularly Dr. Mills and Dr. Hall, engaged in an all out

campaign to prevent her from conducting workshops. She submits that she was entitled by virtue of her settlement agreement with the University to conduct workshops, but these persons impeded her efforts at every turn by delaying and at times refusing to approve workshop forms she submitted. Indeed, she often had to go over Dr. Mills' head, to Dr. Witherspoon, to get the necessary approval for her workshops because of Dr. Mills' resistance.

Dr. Mills explained in her testimony that upon reviewing workshop approval forms when she arrived at Jackson State in the fall of 1987, she noticed that there was no provision for her, as an administrator charged with approving or disapproving workshops, to approve or disapprove of the consultants who were being recommended and hired for workshop participation. Rather, it appeared that the workshop director or, perhaps, the director of the Department of Continuing Education, had that prerogative. According to Dr. Mills, she felt that this prevented her from fulfilling her responsibility as the dean of the School of Education to monitor and maintain the integrity of the program, and she therefore brought her concerns to the attention of Dr. Kenneth Gordon, former director of the Department of Continuing Education, who responded by amending the workshop forms to include a space on the workshop forms for the academic dean's signature. The amended forms were implemented for use the following semester, spring 1988.

Regarding Dr. Langley's workshops, Dr. Mills testified that she began to notice what she described as "a trend or pattern" in the workshops which were developed and submitted by Dr. Langley. Specifically, she

noticed that regardless of the nature or content of her workshops, Dr. Langley was consistently using the same consultants. Dr. Mills considered it "unusual" that Dr. Langley would use the same consultants in all of her workshops since the criteria for selection of consultants should be their expertise in relationship to the content of the workshop. Apparently as a result of her observation about Langley's consultants, Dr. Mills began to look more closely at Dr. Langley's workshops. She learned that almost without exception, the consultants utilized by Dr. Langley for her workshops were members of her family: her mother, Lois Richardson, her husband, Alex Langley, her sister, Helen Graham, and her brother-in-law, Jessie Graham. Dr. Mills questioned the qualifications of these persons to act as consultants, stating that for credit-bearing workshops, a consultant is considered part-time faculty or adjunct faculty who should be able to meet the same qualifications as regular University faculty. Mrs. Richardson was an artisan with only a high school degree or GED; Alex Langley was a geologist with a bachelor's degree; Jessie Graham's degree was in business education. The only consultant whom Dr. Mills believed might possess the requisite credentials was Helen Graham, a student and later graduate of Jackson State in childhood education. Other workshop workers included Renee Richardson, a high school student who had the same address as Dr. Langley and who turned out to be Dr. Langley's niece, and Erick Walsh, Dr. Langley's nephew. Dr. Mills discovered that Dr. Langley had even used her maid once to help with one of her workshops for which her maid was paid $301. Dr. Mills also began to investigate the people who were taking the workshops and

discovered that most of them were Dr. Langley's advisees, and most of them had taken at least two of her workshops. And she further determined that ninety-eight percent of the students who took Dr. Langley's workshops received A's.

Dr. Mills stated that she became quite concerned over her findings, particularly since Dr. Langley's workshops were "credit-bearing," meaning that students received three semester hours for them and could use those hours toward a graduate degree. One concern, she explained, was that the workshops were being substituted for regular University courses, which had two adverse implications for the University: one, it appeared to her that the workshops might not provide the rigor expected of graduate level courses and thus would impugn the quality of the graduate program and jeopardize the image of Jackson State, and two, the University was losing money because students were paying to take workshops rather than registering and paying for regular courses and the money being paid by the students for the workshops was largely going toward paying the workshop instructor, who received $2000 per workshop, consultants, who received $1000 per workshop, and workers, who received an hourly wage up to $300 for their services in connection with the workshops. Dr. Mills stated that it appeared to her that Dr. Langley's workshops were "a money-making scheme," which she considered "the most . . . professionally unethical thing [she] had seen in all [her] 20 years in education." She perceived that it was "a giving away of grades, giving away of degrees," and indeed, she suspected that Dr. Langley's workshop practice explained why Dr. Langley was able to recruit so many students.

Dr. Mills approached the then vice-president of academic affairs, Dr. Frank Black, with her concerns, who told her that one of the reasons she had been brought on board at Jackson State was to "straighten out" the doctoral program, but that she did have to "be careful," since there was a lawsuit and the University did not enjoy having lawsuits. According to Dr. Mills, though she consistently voiced her concerns about Dr. Langley's workshops, no one in the administration ever resolved her concerns about the workshops and consultants, and there were even occasions when she was told by Dr. Witherspoon to just approve the workshops so as to not precipitate any legal action by plaintiff.[18] Dr. Hall similarly voiced concerns about plaintiff's workshops. In a letter dated October 29, 1989, Dr. Hall advised that in her review of a number of student forms submitted by Dr. Langley for her advisees, she noticed that "one or two workshops which you conduct appears on most of the submitted forms. It gives the appearance that students for which you serve as advisor are 'required' to take your workshops. This may or may not be the case, but that is reflected."

Plaintiff implies that one method utilized by Dr. Mills and Dr. Hall to foil her efforts to conduct workshops was to refuse to allow, or at least make it difficult to allow her to conduct the workshops at the University Center. According to Dr. Langley's post-trial brief, she became

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[18] Dr. Mills testified that there came a time after this lawsuit was commenced when Dr. Langley stopped submitting the high number of workshop forms she had previously submitted and started having regular faculty work with her on her workshops.

desirous of holding her workshops at the University Center because of safety problems at the Jackson State main campus. She requested that she be permitted to do so but her request was denied based on a policy concerning "non-credit" workshops. She suggests that this denial was discriminatory and/or retaliatory because her workshops were credit workshops and the non-credit workshop policy therefore should not have been applied. Whether the policy was improperly applied is not pertinent to this court's resolution of this case, though, because the evidence shows, though, that the decisions with respect to what activities could be conducted at the University Center were made by Dr. Strobel, Executive Director of the University Center, and/or the Dr. Kenneth Gordon, Director of the Department of Continuing Education, both white administrators, and not by Jackson State officials or administrators.[19] And plaintiff has not

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[19] During the 1988-1989 school year, plaintiff apparently had some difficulties securing authorization to conduct workshops at the University Center, not as a result of any actions of Dr. Mills or Dr. Hall, but rather as a consequence of a conflict with someone at the University Center. She advised Dr. Strobel by letter dated June 12, 1989 that she would like to offer a number of workshops at the University Center during the 1989-1990 school year if Dr. Strobel would give her approval and allow her budget control. About that time, Dr. Hall also submitted to University Center administrators plaintiff's request that she be permitted to conduct those workshops at the University Center. A response prepared by a Barbara Hatten from the University Center explained that the conducting of credit activities at the University Center required Dr. Strobel's authorization and non-credit activities could only be performed at the University Center through the Department of Continuing Education. There has been no showing whether authorization was ever secured.

suggested that she was prevented from holding her workshops at the Jackson State main campus; without reference to her reason for doing so, she was the one who made the decision that she did not wish to utilize those facilities.

Plaintiff claims that on one occasion, Dr. Mills refused to permit the appropriate forms to be placed in the computer so as to allow students to register for her workshop. It does not appear, though, that Dr. Mills intentionally refused, as plaintiff claims, but rather that there was some confusion as to which workshop(s) plaintiff was actually teaching that term and what information should have been placed in the computer.[20] In any event, prior to plaintiff's writing and demanding that Dr. Mills fill out and submit the appropriate forms to correct the situation and charging her with discrimination and retaliation, Dr. Mills had already addressed the problem.[21]

Dr. Langley additionally asserts that Mills refused to approve her coordination budget forms and returned them to her for resubmission under the guise of alleged "errors" found in her forms, while the forms of other instructors, including those of Dr. Mills, were approved

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[20] There is also some indication that this incident occurred at a time when new computers were being placed in use, which may have contributed to the problem.

[21] Dr. Langley suggests that the difficulties she has experienced in securing approval for her workshops has diminished her professional reputation since she is placed in the position of having recruited students for workshops which do not take place as planned. However, Dr. Hall testified that a professor should not recruit students for a workshop until she has secured approval from the administration to conduct the workshop.

with the same or similar errors. The evidence does show that on one occasion in May of 1991, Dr. Mills returned a coordination budget form prepared by plaintiff pointing out numerous errors she had found in the form and that forms for other instructors with these "errors" were approved. Dr. Mills admitted in her testimony that a mistake had been made in connection with the forms, though she was not sure whether the mistake was made in returning plaintiff's form or in approving the forms of other faculty members. But the court is persuaded that the discrepancy in treatment of these forms was nothing more than a mistake.

Dr. Langley's primary objection concerning her workshops is the delay of administrators in approving those workshops, as contrasted with the usually prompt approval secured by other faculty members. That there was delay in approving some of Dr. Langley's workshops cannot be disputed. The court views the delay, though, as having been the result of Dr. Mills' concerns over the propriety of plaintiff's workshop practice. The most glaring delay occurred in connection with a workshop proposed to be conducted by plaintiff in November 1990 on the topic Dynamics of Play. Dr. Mills questioned plaintiff's proposed use of her family members as consultants for that workshop and undertook to secure ruling from the vice-president on academic affairs on whether that amounted to a conflict of interest.[22] In January 1991, a

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[22] Dr. Mills, on October 23, 1990, requested that Dr. Surles "advise me of any policy that addresses relatives being supervised by an employee for workshops and courses being directed through Continuing Education."

response was received from Dr. Carrol Surles who attached a copy of a University policy which had been adopted in the summer of 1990 which provided:

> No individual shall be employed in a department or unit under the supervision of a relative who has or may have a direct effect on the individual's progress, performance or welfare.

Dr. Mills advised Dr. Langley of the ruling, who ultimately resubmitted her coordination budget form with new consultants.

Despite the fact that she did finally cease the practice of using family members as consultants, plaintiff maintains that all of the consultants she used in her workshops, including those family members, were qualified to function in the capacity for which they were hired, and further insists that her use of family members was not, as Dr. Mills contended, a conflict of interest and that the banner of nepotism and conflict of interest was a mere pretext for the University's efforts to curtail her workshops. She asserts that even if there was a conflict of interest as a result of her using family members in her workshops, she was not the only one who did so but was nevertheless singled out for chastisement and harassment for the practice.

The proof does support plaintiff's position that other professors used members of their families in their workshops. Dr. ReJohnna Brown, for example, used her two daughters, ReJohnna Mitchell and Janase Brown, as consultants in a workshop without objection by Dr. Mills or Dr. Hall. Dr. Mills denied that she was aware that either of the two was related to Dr. Brown, but the daughters'

names alone should have been sufficient to give her reason to think there may have been a familial relationship. However, in the case of Dr. Brown, as contrasted to that of Dr. Langley, there was no indication that the use of her daughters was a common practice or, indeed, that it occurred on more than the one occasion.[23]

Whether Dr. Mills' concerns about Dr. Langley's workshops were well-founded is not an issue which this court must decide. It is sufficient for purposes of resolving this action that the court finds, as it does, that Dr. Mills' beliefs and suspicions about plaintiff's workshops were sincerely held and not completely without foundation. Though Dr. Mills may have examined plaintiff's workshop forms more closely once her suspicions had been aroused and was arguably more demanding of Dr.

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[23] Plaintiff established at trial that Dr. Hall's daughter, Pam Hall, works at Jackson State on the KENAN Project under the supervision of her mother. While Dr. Hall and Dr. Mills, co-chairs on that project, admitted that only five persons are involved in the project and that Dr. Hall oversees the day-to-day activities, they both denied that she was Pam Hall's direct supervisor. In the court's opinion, it is clear that due to the small number of people at Jackson State working on that project and the role of Dr. Hall in connection with the project, Dr. Hall has supervisory authority over her daughter. That would appear on its face to be violative of the nepotism policy if that policy were applicable to Pam Hall's employment. However, the evidence demonstrates that Pam Hall was hired prior to the time the policy became effective.

Plaintiff also attempted to show that a relative of Mr. Mills, her daughter-in-law, Rhonda Teague, worked under Dr. Mills at the University. The proof showed, though, that Ms. Teague, while the mother of Dr. Mills' grandchild, is not related to Dr. Mills by blood or marriage.

Langley regarding compliance with workshop policy, that was the result of her legitimate concerns over the manner in which she perceived that Dr. Langley was abusing, or misusing the workshop program.[24]

Finally, the fact that plaintiff was once granted by this court an opportunity to conduct a workshop "without interference" from University officials should not be interpreted as granting her carte blanche authority to conduct any workshop without adherence to proper guidelines and policy.[25]

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[24] It is notable that while plaintiff in her testimony attributed the problems she has experienced in securing workshop approval to a discriminatory and/or retaliatory animus on the part of Drs. Mills and Hall, it is clear that she had difficulty in having workshops approved prior to Dr. Mills' coming to Jackson State in the fall of 1987 and prior to the time that Dr. Hall became the chairperson of her department in 1988, as evidenced by her prior EEOC charge and lawsuit, in which she complained that a refusal by Jackson State administrators to approve a proposed workshop was discriminatory.

[25] The court would note that Dr. Langley also complains that the consultants in her workshops were not paid on time, and she was constantly having to call the administrative offices to check on the status of the checks. She testified that consultants were supposed to be paid the pay period (one month) following completion of the workshop, but it took anywhere from one to four months for her consultants to be paid. The proof showed, though, that the responsibility for issuing payment to workshop participants was not the function of any of her supervisors, whom she claims in this action to have been the persons who discriminated and retaliated against her, but rather was the function of the fiscal affairs office.

Student Forms

Four student forms are utilized at Jackson State to monitor and track students' progress through their instructional programs toward a terminal degree or any graduate degree. These forms, which consist of a degree form, petition for graduate degree candidacy, graduate school application for degree, and graduate school application for clearance,[26] are prepared by the student in consultation with his or her advisor, and require approval of the chairperson of the department, the academic dean and the dean of the graduate school. Dr. Langley testified that the students she advised suffered tremendous delays in securing approval of their forms. Forms were often delayed with no reason given, returned for corrections, or

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[26] Form 1, a degree form, is initiated by the student in consultation with his or her advisor at the beginning of the student's enrollment, and contains a listing of every course that will constitute the student's course of study, including courses that the student proposes to transfer for credit from other educational institutions. The advisor is responsible for ensuring that the student's course of study is correct. Form 2, a petition for graduate degree candidacy, is to be filled out by the student in consultation with his or her advisor when the student has completed approximately twelve hours of course work, and indicates whether the student has taken the graduate record and English competency exams and whether the student plans to prepare a thesis or seek extra credit. Form 3 is the graduate school application for a degree which is to be filled out at the beginning of the student's last semester, and should reveal whether the student has completed the basic requirements for obtaining his or her graduate degree. Form 4 is the graduate school application for clearance, which is intended to show that the student has "cleared out" at the library, placement office, alumni affairs office, and at physical affairs. This form is normally completed from one to three weeks prior to graduation.

were lost altogether. This presented problems for her students, since students had to know whether and which proposed courses would be accepted in order for them to register for classes. At times, they would end up having to take additional courses or experiencing difficulties and delays in securing their teacher certification. According to Dr. Langley, many times she would agree on courses, and her department head would approve them, but the dean's office would reject them. Or Dr. Hall would return forms to her citing "errors" when the forms had in fact been correctly and accurately completed. Plaintiff testified that she believed the delays that were experienced by her advisees in securing approval of their forms was "just another way to retaliate against" her.

At trial, plaintiff offered the testimony of Craig VanGelder, a statistician, who presented an analysis of the time it took for approval of Forms 1, 2 and 3 of students advised by Dr. Langley as compared with that of the advisees of all other professors. VanGelder testified that his analysis of 117 of such forms of Dr. Langley and 53 forms of other professors revealed that it took an average of 34.35 days for approval of Dr. Langley's forms as compared to an average of 3.15 days for approval of the forms of all other professors. VanGelder testified that this was a "real" difference, meaning it could not be accounted for by chance. This was true also of his separate analysis of each of the three types of forms. His analysis of 29 Form 1's of Dr. Langley compared to 8 Form 1's of other professors revealed a mean difference of 60 days versus 1.2 days; comparing 49 of Dr. Langley's Form 2's to 25 Form 2's of other professors, he discovered a mean difference of 23 days versus 4.5 days; and a

comparison of 39 of Dr. Langley's Form 3's to 20 Form 3's of other professors demonstrated a mean difference of 28.9 days versus 2.1 days. These differences were "real" and could not be accounted for by chance.

Though VanGelder's findings might appear facially significant, VanGelder stated that he did not know how the forms he analyzed were selected or compiled, he did not take account of when the forms were delivered from one office to another for approval and he acknowledged that his findings might have been different if Dr. Langley had not actually delivered the forms to another office for approval on the date shown on the form for her signature. In this regard, Dr. Langley testified that after she had encountered some delays in securing approval of student forms, she began keeping all of the forms and delivering them in a group to Dr. Hall's office for approval. Additionally, Dr. Hall stated that she often discovered omissions or errors in the forms and returned them to Dr. Langley – in some cases as many as two and three times – and the dates shown on the forms were not changed when they were resubmitted to her for approval. The court cannot conclude that VanGelder's testimony is probative on this issue inasmuch as he did not take into account these circumstances.

It is true that in some cases, Dr. Langley experienced greater delay in obtaining approval of her advisees' forms than did other professors.[27] One of the reasons for

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[27] There is proof, however, that other professors experienced extreme delays as well. For example, Exhibit D-80 shows delays in obtaining final approval of forms of Dr. Barnes West's advisees of 34 days, 35 days, 65 days, 65 days and 170 days,

that delay is attributable to the method by which Dr. Langley submitted the forms. Dr. Hall estimated that it took her approximately an hour to review each form that was submitted and to verify the information contained in the form. She explained that because Dr. Langley submitted her advisees' forms in batches of twelve or more, she would often "work in" the forms of other professors, or their advisees, who submitted them one at a time, apparently having adopted a practice of delivering the forms to Dr. Mills in the same grouping in which they were delivered to her. Another reason for the delay in some cases was Dr. Hall's having erroneously returned forms to Dr. Langley for corrections or completion when the forms were submitted in proper form. For example, Dr. Hall erroneously returned the forms of Barbara Westerfield, Pat Balls and Lynn Masters, stating that courses which those students proposed to transfer for credit exceeded the University's eight-year time limit for granting credit for transferred courses; the graduate catalog provided that a student could transfer courses for up to ten years. She also returned the forms of Martha King, Annette Carter, Delores Walker and Doris Brady for the reason that the students had not completed a part of Form 1. The part of the form which had not been completed was required to be completed only by masters students and these students were specialist students. The court does

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despite the fact that he was, as plaintiff points out, an advisor to the dean with some control over the signing-off time. Cherry Ada, another professor, experienced delays of 28 days, 32 days, 66 days, 68 days and 61 days. Dr. Hall even encountered delays of 19 days and 20 days in securing Dr. Mills' approval of her students forms.

not find Dr. Hall's having returned these forms to have been an intentional act of retaliation or discrimination, though, but rather of inattention and an unfortunate lack of familiarity by Dr. Hall with the applicable policies of the University on course transfers.[28]

In summary, frustration on the part of the students, and of Dr. Langley, with the delay and confusion that has attended the student form approval process is understandable, but the court is unable to conclude that the evidence substantiates Dr. Langley's contention that this delay was the result of discrimination or retaliation.

Advisement\Chairing Doctoral Committees

Dr. Langley complains that defendant and its employees have made every effort since the filing of her EEOC charge and execution of her settlement agreement to prevent her from serving as an advisor to students. In a related vein, she contends that defendant has attempted

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[28] Dr. Langley complains that some facets of some of her students' course plans were disapproved or disallowed for "arbitrary" reasons but she has not sufficiently demonstrated to the court that the rejections were indeed marked by arbitrariness. And, she asserts in her post-trial brief that Drs. Hall and Mills essentially concocted a requirement that students sign their own forms, rather than allowing their advisor to sign the forms for them, but applied this requirement only to Dr. Langley's students. This, she claims, was an attack on her professionalism and an effort by the administration to undermine her students' confidence in her. There is no proof, however, that this signing requirement was applied only to Dr. Langley's advisees.

to prevent her from chairing doctoral and specialist committees of students in the Early Childhood and/or Elementary Education program notwithstanding the fact that she is the only faculty member in the department who holds a specialist degree in early childhood education and elementary eduction [sic].

The evidence shows that Dr. Hall formed an advisement committee, of which Dr. Langley was a member, to evaluate the advisement system used by the Department of Curriculum and Instruction. Based on a recommendation of the committee, a policy was activated whereby students, other than doctoral students, were assigned to a faculty member under a system which paired them with a professor by the last digit of their social security number. Drs. Mills and Hall testified that this policy was intended for the sole purpose of equalizing the distribution of advisees among the faculty to ensure that all professors were involved in the advisement process. Prior to the time the policy was enforced, some professors advised no students, and the administration felt they should become involved in the process, and others, particularly Dr. Langley, advised a disproportionately high number of students. Dr. Langley admitted that she sustained no direct loss of compensation by virtue of students being assigned to other advisors and prevented from selecting her as their advisor, and conceded that this operated to reduce her workload, particularly since she at one time advised more students than all the other faculty members in her department combined and advised the majority of students who were seeking a degree in elementary and early childhood education. Nevertheless, she testified that "it made [her] very unhappy" when students she had

recruited and who had been advised by her were assigned to other faculty members for advisement because it made the students "very unhappy" about not having a choice in advisors. She explained:

> When you go out and you recruit students and they come into the program and they move along in their program for a while and then all of a sudden they are sent a letter telling them they are being assigned to other advisors, then they get very upset and they have planned their program with you and they are working with you through their program so it causes a lot of problems because you have got to reroute and let someone else start over with them.

But Mr. Hall testified, and the written policy supported her testimony, that in order to avoid the precise problem plaintiff described, the policy for advisor assignment was not applied to students who had completed twelve or more hours in their program of study. Those students were permitted to remain with the advisor with whom they had begun their course work.

Dr. Langley further testified that she advised more students in the School of Education than did other faculty members because she recruited harder than other faculty members. And the essence of her testimony was that she believed that if she recruited students to attend Jackson State, which she was encouraged to do and which she did more so than any other member of the Jackson State faculty, particularly for attendance at the University Center, then she should be allowed to work with those students. That is, since she was responsible for these students' decision to attend Jackson State and since she

was the one who had developed a rapport with them, then she believed that she should have been permitted to act as their advisor if she chose to and if they wanted her to. Indeed, Dr. Langley expressed that it had been her understanding, upon being sent to the University Center, that she was to be the advisor for all of the University Center students. Dr. Mills denied that plaintiff was ever told that she was to be the permanent advisor at the University Center. Rather, she was to *temporarily* advise all students. And while Dr. Langley had asked that she be assigned as the permanent advisor for all University Center students, that was never intended and was not permitted. Students, Dr. Mills explained, were coming to the University Center not only from the Department of Curriculum and Instruction, Dr. Langley's department, but also from Guidance and Counseling, and Educational Leadership and Foundations, and Dr. Langley simply did not have the background and expertise to advise students in those various areas.[29] Plaintiff admitted that she, while recruiting for the University Center as part of her continuing education duties, was recruiting for all of the departments in the School of Education, including Guidance and Counseling and Administration, but felt that she was entitled to advise those students whom she chose to advise.

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[29] A January 8, 1988 letter from Dr. Mills to Dr. Bettye Gaulden, the director of the University Center program, indicated that Dr. Langley was to be a temporary advisor and that after registration, permanent advisors for new students would be assigned by the departments in accordance with departmental guidelines.

The court is persuaded that the decision to assign students to advisors rather than allow them to select their advisors was legitimately motivated. Though Dr. Langley had an interest in and desire to advise those students whom she recruited, her desire was not paramount to that of the University in equalizing the distribution of advisees among faculty members in order to involve the entire faculty in the advisement process.[30]

On the subject of chairing doctoral dissertations, plaintiff testified that during a meeting between Dr. McLemore and the doctoral faculty, Dr. McLemore commented that he was "sick and tired" of seeing Bettye Langley and Georgia Napier's names as the directors of dissertations or as the chairpersons, and he "projected that people with degrees in political science and history were just as qualified and capable of directing doctoral dissertations as we were." Dr. Langley testified that she was "very, very concerned" about and "disappointed" by Dr. McLemore's statement, because she believed that his proposal, if implemented, would violate National College Accreditation (NCATE) standards[31] and would destroy

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[30] The court notes that one white professor in the School of Education, Sherry Briggs, expressed that she felt that she was not treated fairly since she was not assigned to advise many students.

[31] Dr. Langley testified that NCATE standards required that the chairperson of the dissertation have a degree or specialization in the area of the degree sought, and that obviously, a person with a degree in political science was not qualified under those standards to chair a dissertation by a person seeking a degree in early childhood or elementary education. She acknowledged on cross-examination that the NCATE standards addressed only the faculty that work in the degree program and

the credibility of Jackson State's doctoral program. Dr. Mills, in her testimony, explained that after Dr. Frank Black "came over to" the School of Education, he prepared an assessment or accounting of students' doctoral committees, which revealed that Dr. Georgia Napier chaired seven committees, Dr. Langley seven and Dr. Winona Burns one committee. According to Mills, that showed that the doctoral program was being dominated and controlled by essentially two people. This, she explained, was detrimental to Jackson State and the School of Education from the standpoint of receiving NCATE accreditation, specifically and generally, maintaining a quality doctoral program and producing quality doctoral graduates, since "[i]t means that the students don't have a broad education and their training is very, very limited to the thoughts and expertise of those people who are in control." Her views were shared by Dr. McLemore, who proposed to "equalize distribution of work relative to doctoral committee assignments."

Again, the court is not persuaded that Dr. Langley's "concern" over a decision by the administration to equalize doctoral committee assignments without giving due consideration to the qualifications of the chairs of those committees translates into discrimination or retaliation against this plaintiff. It is not for this court to evaluate the wisdom of such a decision in terms of academic benefit to

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do not address doctoral committee members and chairpersons or advisors. But the graduate handbook of Jackson State provides, "the chairperson (advisor) must be in the school's approved academic concentration and must have graduate school approval."

the students or to the quality of the doctoral program at Jackson State, but rather to determine whether the decision, regardless of whether it was right or wrong from those standpoints, was motivated by legitimate concerns on the part of the administration. And in the court's view, it appears that this decision was.

Committee Appointments

Dr. Langley complains in this action of Dr. Mills' refusal to appoint her to committees in the School of Education, contending that this refusal is retaliatory and discriminatory. In her testimony, Dr. Mills explained that the majority of members of standing committees of the School of Education are elected by their peers at the faculty seminar meeting held at the commencement of each fall semester. She reserves to herself some committee appointments. She stated that while she recalled that Dr. Langley had attended at least one of those fall meetings, Dr. Langley usually was not in attendance.[32] She expressed, though, that all faculty members, including Dr. Langley, are either elected or appointed to serve on committees since it is her practice to make sure that each faculty member serves on two committees, and the exhibits reflecting committee membership for the years in question support her testimony. Plaintiff's primary objection regarding committee assignments is that she was not appointed by Dr. Mills to serve on an advisory committee for the School of Education, despite the fact that she was

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[32] Her testimony in this respect is borne out by the exhibits. It appears from the exhibits that plaintiff has in fact, since 1987, attended only one such meeting.

peculiarly suited for appointment to that committee and had a distinct interest in the affairs of that committee. Dr. Langley insisted in her testimony, and to Dr. Witherspoon at the time the committee was formed, that she should have been placed on the Advisory Committee, since the function of the committee included consideration of "the doctoral program," "How programs are used in Continuing Education," "Relationship with Continuing Education program," "Advisement, recruitment and retention," and "Advisement of continuing education students," all areas in which Dr. Langley had a particular interest and particular need for input by virtue of her position as a member of the "doctoral faculty," as an active recruiter, and as the coordinator of continuing education for the School of Education.

Dr. Mills testified that she had selected the members of the advisory committee for the School of Education, whose purpose was to evaluate policies and procedures of the school and make recommendations for improving the school. Dr. Langley, who was not placed on the committee initially, went to Dr. Witherspoon and asked that he request that Dr. Mills appoint her to the committee. Dr. Mills did so and wrote to Dr. Langley that she was being placed on the committee. However, Dr. Mills explained, Dr. Langley missed the first meeting and the committee later dissolved, but only after making several recommendations and forming new policies on internship and workshops.[33]

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[33] Plaintiff testified that she missed the first meeting because she did not receive notice of the meeting until after it had already been held. The exhibits reviewed by the court show

In the court's view, Dr. Mills' failure to place plaintiff on the advisory committee was an obvious omission given plaintiff's apparent involvement and interest in the specific areas the committee was to address. Dr. Mills failed to offer any explanation for not having initially selected plaintiff for that committee, other than to state that she did do so when asked by Dr. Witherspoon, but the court is not persuaded by plaintiff's evidence that this failure was the result of retaliation or discrimination.

University Center

Plaintiff requested on numerous occasions that she be permitted to move her office and teach her classes at the University Center in order that she might be removed from what she perceived to be a racially charged environment in the School of Education on the main campus of Jackson State. After meetings with Dr. Ray Cleere with the Institutions of Higher Learning (IHL) and Mr. Ed Noble, an assistant attorney general acting as counsel for IHL, in the summer of 1988, plaintiff's request was granted. In August 1988, according to plaintiff, she received a telephone call from Dr. Strobel, Executive Director of the University Center, in which he instructed her to attend a registration meeting for the Center. Thereafter, plaintiff testified, Dr. Mills called her into her office and told her that she was moving to the University

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that the committee meeting plaintiff missed because of her not having received prior notice of the meeting occurred in the spring of 1988. The first meeting of which plaintiff was advised by Dr. Mills was in the fall of 1987.

Center and was to vacate her office on campus immediately.[34] Plaintiff packed up her belongings and vacated her office on campus that day.[35]

Plaintiff complains in this action that once she was directed by Dr. Mills to move to the University Center, she experienced told [sic] difficulties in securing an office, furniture and telephone service. She was additionally denied photocopying service as well as timely delivery of her mail.

Office Space and Furnishings

Dr. Langley testified that though she commenced her duties at the University Center in September 1989, she was not provided an office for eight months, despite repeated, daily communication with Dr. Witherspoon, Dr. Hefner and Dr. Strobel requesting assistance in securing an office. She claims that during this eight months, she was forced to transport her files and papers to and from the University Center and work out of the trunk of her car and was caused to meet with students in a [sic] the

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[34] Plaintiff further claimed that Dr. Mills told her at that time that she, Dr. Mills, was glad plaintiff was leaving and did not care if plaintiff never came back to campus, even to attend meetings. The court did not find Dr. Langley's testimony credible in this regard.

[35] Dr. Mills testified that two faculty members from the School of Education were initially sent to the University Center, Dr. Langley and Dr. Earl Leggett [sic]. Dr. Langley, she said, was to temporarily advise all of the University Center students, along with Dr. Leggett [sic], and was also to teach some courses, assist with registration and carry out her responsibilities as continuing education coordinator for the School of Education.

registrar's office at the University Center. In contrast, according to plaintiff, other instructors – black instructors, including Tommie Stewart, Dr. Earl Leggette [sic] and Dr. Gladys Johnson – were afforded immediate office space. Plaintiff asserts that when finally in April 1989, she was offered a "very small office" as a temporary office until the renovations on what was to be her permanent office were completed,[36] she was not provided with suitable furniture. She was given only a desk, the top drawer of which was missing, a typing stand that had been thrown away by the library, and two chairs, one of which was orange and torn and the other of which was green, worn out and very unsteady. She was given no filing cabinet or lamp. In contrast, according to plaintiff, others housed at the University Center were allowed to move their furniture from campus or were provided suitable furniture. The director, Dr. Strobel, had even acquired all new furniture. Because she considered that the furniture with which she was provided was "inappropriate," plaintiff purchased office furniture at her own expense. Plaintiff complains that even after she finally secured an office and furnishings, some time passed before she was provided with a telephone line, and even then, she had to provide her own telephone.

Defendant denies that there was any purposeful delay in providing office space or telephone service for Dr. Langley, or that she was discriminated against or

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[36] She asserted in her testimony that the permanent office was larger, but it was not available because Dr. Strobel "just didn't want to do the renovations on it right then."

retaliated against in terms of being provided office furniture at the University Center. The proof, in the court's opinion, supports defendant's denial. Dr. Mills explained in her testimony that Dr. Langley had many times requested that she be moved to the University Center, so when in 1988 the University Center became the "host" of the University Center and was ready to begin receiving Jackson State personnel, Dr. Langley was asked if she wanted to be housed there. She did. Regarding office space and furnishings, Dr. Mills testified that in July 1988, a request was made by Dr. Witherspoon of all the deans to advise of their needs at the University Center. On July 14, 1988, a couple of days after receiving Dr. Witherspoon's request, Dr. Mills communicated the School of Education's office needs, which included, *inter alia*, five departmental offices, one secretarial office and one conference room, as well as furnishings including ten faculty desks and chairs, one clerical desk and chair, ten file cabinets, four file cabinets for secretaries, desk lamps, waste baskets, a typewriter and computer system, and a conference table and chairs. Once she had made that request, according to Dr. Mills, she had no further control over whether those items were provided. Rather, it then became the responsibility of Dr. Strobel, the University Center director.

Ruth Campbell testified that she became the associate director of the University Center in July 1988, when Jackson State became the host of the Center. Ms. Campbell stated that when Jackson State came to the University Center, a number of agencies were in the process of vacating the building and the floor plan was changed to accommodate the needs of Jackson State. When a request

was made for office space for Dr. Langley and Dr. Earl Leggett, though the Center was in the process of undergoing renovations, there were a number of rooms which could be used as offices. According to Campbell, both professors were offered whatever may have then been available as office space, and it was their decision whether to accept the available space or await the completion of renovations. Ms. Campbell was quite clear in her testimony that anytime after July 1988, when Jackson State became the host of the Center, Dr. Langley could have had office space in the building; she would have been provided an office from whatever space was available whenever she wanted to move in. Ms. Campbell also made clear that the treatment Dr. Langley received in connection with arrangements for office space was no different than for anyone else. Regarding furnishings for the offices, Ms. Campbell stated that the furniture that was available for use of University Center occupants was "odds and ends" and "bits and pieces." All of the offices were furnished with remnants as no new furniture allotments were made when Jackson State moved into the Center. Much of the furniture that had been available was on loan from the Institutions of Higher Learning (IHL) and a lot of that went back to IHL. And what remained was in various conditions. According to Ms. Campbell, "we furnished as many offices as we could with what we had." Ms. Campbell explained that Dr. Mills had made an inquiry about the furnishings, suggesting that perhaps Dr. Langley was not pleased with her furniture, but Ms. Campbell assured Dr. Mills that Dr. Langley had not been treated any differently than others with respect to the

provision of office furniture. On the question of telephone service, Ms. Campbell explained that IHL, and not Jackson State, controls telephone service at the University Center, and as soon as Dr. Langley moved into the University Center in May of 1989, a request was made of the Central Department of Purchasing for telephone service.

Documentary evidence confirms that temporary office space was offered to plaintiff for use in the fall of 1988. She, however, rejected it as "inappropriate" for one in her position. A memorandum prepared by Dr. Strobel explains that provisions were made for the assignment of office space to Dr. Langley and Dr. Leggett when it became known that the two would be housed at the University Center. Dr. Leggett elected to utilize the space offered him. Dr. Langley's initial response to the offer of temporary accommodations was "negative" and "even threatening in nature (intimating she would sue)." Several months later, however, she requested that she be assigned office space and was assigned temporary space until renovations to her permanent office could be completed. After renovations were completed, she moved into her present office. Dr. Strobel's memorandum further recites that since Jackson State and the University Center were not provided with start-up budgets for office equipment and furniture for the main offices or faculty offices, Dr. Strobel attempted to identify unused furniture left behind by IHL personnel who had vacated the space and was granted temporary use of some of that furniture. Every effort was made to reserve the best of that furniture for faculty moving to the Center. Most of the Jackson State faculty and staff experienced no problems selecting from the available furniture and in fact, much of the

furniture in the University Center came from the inventory of used furniture. Similarly, a memorandum prepared by Thomas Bethany, the University Center technical services director, explains that the furniture placed in Dr. Langley's office was from the "same pile used by the JSU Administrative Offices, MBAW Offices, Registrar Office, University of Mississippi and University of Southern Mississippi Offices." Indeed, some of the furniture that Dr. Langley rejected was used by Dr. Earl Leggett in his office. These memoranda further indicate that telephone service for Dr. Langley was the responsibility of IHL and was requested and provided as soon as was practicable.

It is clear, in the court's opinion, that Dr. Langley was not immediately housed at the University Center upon her being transferred there for the sole reason that plaintiff herself refused to accept the accommodations that were made available to her. The court is further of the opinion that the accomodations [sic] offered her were neither more inferior nor inappropriate than that offered any other faculty member of Jackson State. The same is true with respect to the provision of furniture. Plaintiff was given the opportunity to select from the same furniture as were other faculty members but chose for her own reasons to reject that which had been offered.

Photocopying

Dr. Langley complains that further harassment was directed toward her in the form of denying her the use of the Xerox machine at the University Center for her photocopying needs. Dr. Langley testified that she was initially

given an authorization code for using the copier, which she shared with Dr. Leggett. However, when she attempted to use the copier with her authorization code in January 1990, she learned that her code had been removed from the copier. She was then advised by Dr. Hall that she would be limited to $20 per month for photocopying at the University Center. Additional copying needs would have to be satisfied by taking her papers to the main campus for copying, via either herself, her students or a courier service. Dr. Langley testified that she found the limitation of $20 per month unacceptable because that amount was not nearly sufficient to satisfy the photocopying needs of one with her student and advisement load. She also found the notion of taking her papers to campus for copying unsuitable since she did not have the time with her workload to travel to campus for photocopying. And she was not "comfortable" with having students or a courier service transporting her papers, which included, *inter alia*, dissertations, theses and student assignments. Plaintiff stated in her testimony that she communicated with Dr. Hefner on a number of occasions when problems arose concerning access to copying services, and was assured by Dr. Hefner that she would have access to copier services while housed at the University Center.

Dr. Mills testified that while she had requested that a copier be provided the School of Education at the University Center, that was not provided because of budgetary constraints. She made no further arrangements for the copying needs of School of Education faculty members who became housed at the University Center because she had expected that those persons would continue to do the

bulk of their copying when they returned to campus for meetings and "what have you." In March 1989, Dr. Mills received a bill from Dr. Strobel of $30.52 for copies made at the University Center in the month of February 1989; thre [sic] was no indication on the bill by whom the copies had been made for which payment was requested. Dr. Mills responded that she had not authorized the establishment of an account for the School of Education and had not authorized anyone in her department to copy material at the University Center. Dr. Mills returned the bill to Dr. Strobel. By letter dated September 11, 1989, Dr. Strobel's office sent additional outstanding statements for copies to Dr. Witherspoon, there again being no indication which faculty member(s) had made copies. And in January 1990, additional statements were sent to Dr. Witherspoon by Dr. Strobel's office, along with a letter stating that the invoices were for Dr. Betty Langley and Dr. Earl Leggette's use of the University Center Xerox machine. Dr. Surles forwarded the bills to Dr. Mills, indicating that the bills had to be paid. Dr. Mills thereafter on January 29, 1990 directed Dr. Hall to prepare a requisition for payment of the bills and suggested that Dr. Hall speak with her instructors concerning the future handling of their copying needs. In February 1990, Dr. Hall wrote plaintiff expressing a need to speak with her regarding plaintiff's photocopying needs at the University Center. That letter was followed by a conference between Drs. Hall and Langley, which was succeeded by a March 8, 1990 memorandum from Dr. Hall stating that plaintiff would be allocated $20 per month for copy charges at the University Center for the rest of that fiscal year and that copying needs would be budgeted for the 1990-91 school

year based on an average need. Plaintiff was advised that her remaining photocopying needs would have to [sic] satisfied by using the copier at the main campus. Students could transport papers for copying or plaintiff could use a courier service. Dr. Mills testified that ultimately, because the copying bill from the University Center was becoming "outrageous," (reference was had in particular to bills for Dr. Langley's photocopying for March 1990 in the amount of $131.24 for 1544 copies, and for April 1990 in the amount of $150.03 for 1765 copies), she wrote to Dr. Strobel asking that each faculty member be limited to 1000 copies per month.

The court is unable to conclude from the evidence presented that plaintiff has been discriminated against or retaliated against in the manner complained of. The documentary evidence, as well as Dr. Mills' testimony, strongly suggests that Dr. Mills' reaction to the use of the photocopier at the University Center was not directed toward plaintiff but rather to any School of Education personnel making copies at the University Center. Indeed, the evidence reveals that Dr. Mills had refused to pay the bills and disavowed any intention that her faculty be authorized to use the Xerox machine at the University Center for almost a year prior to the time she first learned, in January 1990, that Dr. Langley was responsible for any part of the copying bill. And though she persisted in her efforts to curtail photocopying at the University Center at that time, Dr. Mills' efforts were in connection with bills reflecting use of the copier not only by Dr. Langley, but also by Dr. Earl Leggett [sic], a black faculty member. Dr. Mills did ultimately attempt, in response to a complaint by Dr. Hall about the excessive

number of copies being made by Dr. Langley, to implement a 1000 per person copy limit on the number of copies for which her department would be responsible. However, there was no showing that similarly high numbers of copies were being generated by any other faculty members and such a limitation does not appear facially to have been unreasonable in light of the budgetary problems experienced by the University.

Mail

Dr. Langley contends that since her move to the University Center, defendant has consistently failed to undertake efforts to ensure that she receive work-related mail in a timely fashion. In February 1990, Dr. Langley complained to Dr. Mills that as a result of problems she had experienced in connection with her mail, she had received notices of meetings and assignments after-the-fact, and requested that in order to avoid such problems in the future, mail directed from Dr. Mills' office be sent directly to plaintiff's home address or to the University Center. But Dr. Langley continued to receive notices of meetings and assignments after the meetings had taken place or the assignments were scheduled to have been performed.

Dr. Mills denied that she had knowingly or intentionally notified Dr. Langley of meetings after those meetings had already taken place. She explained that she was not initially aware of any problems Dr. Langley was experiencing in receiving her mail after Dr. Langley had moved to the University Center. According to Dr. Mills' testimony, she had been giving Dr. Langley's mail to her

secretary who, in turn, had been taking the mail to Dr. Langley's secretary in her department, Curriculum and Instruction, on the main Jackson State campus, for her secretary to send out to the University Center. When in the spring of 1990, Dr. Langley began complaining that she was not receiving her mail, Dr. Mills learned that the department secretary was simply placing the mail in Dr. Langley's box there in the department, and that the mail was not being delivered to Dr. Langley. Dr. Hall similarly testified that after Dr. Langley moved to the University Center, she had directed the secretary of the Department of Curriculum and Instruction to send Dr. Langley's mail to the University Center, but she maintained a box on the main campus for Dr. Langley. Dr. Hall later learned that plaintiff's mail was being directed to her box on campus rather than to the University Center and she was therefore not receiving this mail.

Dr. Langley requested of Dr. Mills that she begin sending her mail to her directly at her home or at the University Center. Consequently, Dr. Mills began sending her mail by certified mail to the University Center so that she could be assured Dr. Langley was receiving her mail. That proved unworkable when a letter sent certified mail by Dr. Mills to the University Center did not make its way to Dr. Langley. Dr. Strobel advised Dr. Mills that someone at the University Center had signed for the letter and then sent it back to the main campus for delivery to Dr. Langley. Dr. Langley complained to him that she had not gotten the letter and had threatened to go to her lawyer.[37] So Dr. Mills tried a new approach. She

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[37] Ms. Campbell testified that all mail for the University Center is delivered to IHL, from where it is distributed. She

determined that all of the mail she had received from Dr. Langley reflected Dr. Langley's home address, so she began sending the mail certified to her home. In the course of Dr. Langley's deposition in this case in December 1990, Dr. Mills learned, though, that this method was also problematic since the mail, because it was certified, had not gone directly to Dr. Langley's home but had instead been delivered to a post office box that was, according to Dr. Langley, far from her home which was inconvenient for her.

While there is nothing to indicate that she has suffered any adverse employment consequence as a result of the problems she has experienced in connection with receiving her mail, it is clear that plaintiff has been inconvenienced to some extent. Moreover, that one could have such difficulty sending mail to a faculty member is almost incomprehensible to the court. Dr. Hall testified that many of the problems involved in the timely delivery of the mail is attributable to the campus post office. She testified that often, batches of notices or letters taken to the campus post office are delivered late, because the date they are taken to be mailed is often not the date that these items are sent from the post office into the regular mail system. The court cannot conclude on the evidence

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recalled that on one occasion, someone at IHL had signed for a certified letter for Dr. Langley and IHL had thereafter sent that letter to the University Center. The University Center, however, felt that the letter should not have been accepted since Dr. Langley did not sign for it, so the University Center sent the letter back to IHL instead of delivering it to Dr. Langley. She explained, "the letter wasn't ours to accept."

presented that the mail difficulties plaintiff has experienced are the result of discrimination or retaliation *per se*.[38] Rather, it appears that the mail problem has been due in part to inefficiency and/or ineptness at some phase of the mailing system.[39]

Late Assignments

Closely related to her objection concerning the mail problem she has experienced is plaintiff's complaint that she has often received notices of meetings and assignments after those meetings have already taken place or after the assignments were to have been performed. Certain of the exhibits relied on by plaintiff as evidence of such late notices relate to a period of time during which plaintiff was still housed on the main campus of Jackson State:

> P-326: Memorandum From Dr. Mills appointing Dr. Langley to the School of Education Advisory Committee and informing of first meeting on March 9, 1988 at 2:00 p.m. Handwritten note in

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[38] It further appears that the mail problem is due in part to a determination on the part of Jackson State administrators, and specifically Dr. Mills, that they must carefully document everything that is done regarding Dr. Langley in an effort to defend charges she might make against the University. Perhaps a ledger could be prepared documenting mail that is sent to Dr. Langley and the date it is sent as a means of avoiding future mail questions.

[39] The court would observe, though, that the most logical and direct mailing route would be regular mail to Dr. Langley at the University Center, or even to her home.

top corner indicates that it was received March 10, 1988 at 3:30 p.m.

P-327: Memorandum from Dr. Mills requesting that Dr. Langley represent the School of Education as readers of the graduate English essays. Dated March 8, 1988. Marked received by plaintiff March 23, 1988.

P-328: Memorandum from Dr. E. C. Foster to Langley, Phillips and Wiggins, dated March 11, 1988 requesting that they come to Graduate office March 11-25, 1988 between 8:00 a.m. and 4:00 p.m. to read assigned essays.

In the court's opinion, however, proof submitted by defendant demonstrated that plaintiff was not the only one to have received notices after-the-fact. *See* D-234, D-235, D-236, D-237 and D-218. Plaintiff asserts in her brief that these defense exhibits are irrelevant to the issue of late assignments since those documents represent campus mail which is dropped off and picked up by work study students for movement from office to office. However, those exhibits upon which plaintiff relies that reflect dates in the spring semester of 1988 fall into this same category.

As proof of late assignments and notices after she was transferred to the University Center, plaintiff relies on the following exhibits:

P-329: Memorandum to professors, including Betty Langley, from Cozetta W. Buckley, Associate Dean, School of Education, dated January 10, 1990, asking that professors advise their students of a meeting for undergraduates and advisors on January 10, 1990 at 4:00 p.m. Envelope reflects that it was mailed to Dr. Langley at her

home on January 11, 1990 and received by Dr. Langley January 12, 1990.

P-330: January 22, 1990 memorandum from Dr. Mills to department chairs and faculty notifying of workshops scheduled for January 25 and February 1, 1990. Attached envelope indicates that it was mailed to Dr. Langley on January 25, 1990.

P-334; March 26, 1990 letter from Dr. Langley to Dr. Hall advising that she had received on March 22, 1990 Dr. Hall's March 8, 1990 memorandum assigning her to do a section in a March 23, 1990 workshop and advising that she was unable to complete the assignment due to the lack of preparation time.

P-340: Memorandum to faculty members advising of spring 1991 pre-registration schedule for November 12 through December 7, 1990. Envelope addressed to Dr. Langley at University Center reflects postmark of November 14, 1990. No indication of date prepared.[40]

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[40] Plaintiff also cited a number of other exhibits which, in the court's view, are not probative inasmuch as these documents either contain no indication as to the dates sent or received, or the dates indicated do not suggest that they were sent in an untimely fashion:

P-333: March 6, 1990 notice of a faculty development seminar. No indication of when sent or received.

P-335: Copy of fall 1990 registration schedule dated August 24, 1990 to Bettye Langley from Dr. Hall assigning Dr. Langley to perform registration duties on August 27 and August 28. No indication of when received by Dr. Langley.

P-337: April 23, 1990 memorandum from Dr. Mills to Dr. Langley and others requesting submission of evaluations of student essays by April 30, 1990. Envelope to Dr. Langley at University Center postmarked April 24, 1990.

Most recently, in January 1992, a notice sent out to faculty members, including Dr. Langley, of the spring registration schedule commencing January 13 was postmarked January 13, 1992.

Though it cannot be disputed that plaintiff did receive these notices after-the-fact, it appears that this problem is again related to an [sic] of the same type as the difficulties plaintiff experienced in securing delivery of her mail. The court does not perceive that there was an intentional effort to deprive plaintiff of timely notice of these assignments and meetings. Dr. Hall testified that Dr. Langley related to her on one or two occasions that she had received notices after the meetings; therefore, Dr. Hall, when a meeting was important, not only sent a copy of the notice to Dr. Langley, but called her at home and spoke with her or left a message on her answering machine. Moreover, Dr. Hall testified that many times other faculty members also receive their mail late, including the most recent notice of school registration. According to Dr. Hall, not only Dr. Langley, but all faculty in the department reported that they received the notices late. In some cases, it appears that because she was no longer housed on the main campus, these notices, which appear to have been prepared at or on the same date the subject events were to take place, could not be delivered to plaintiff on campus and no real effort was made to ensure that notices were prepared and sent out earlier in order that they would be delivered to plaintiff, as contrasted with personnel housed on the main campus, in a timely manner. Again, while this failure on the part of defendant's administrators is unacceptable as a matter of

proper and efficient administration, the court cannot conclude that it was discriminatory or retaliatory in nature.[41]

Task Assignment

Dr. Langley complains that she has been assigned tasks that were not in keeping with her job description, as contained in her settlement agreement, and that her assignments include tasks which she considers demeaning and more appropriate for secretarial personnel. She further complains that Dr. Mills has refused to apprise her of specific job objectives, has withdrawn or told her not to complete tasks once assigned, or has reprimanded her for not properly completing tasks which had been assigned. In contrast to plaintiff's testimony, Dr. Mills stated in her testimony that she experienced problems with most of the tasks she assigned to Dr. Langley. She testified, for example, that in an effort to "get a handle" on how many students were enrolled in the School of Education at the University Center, she had at one time asked Dr. Langley in her position as coordinator of continuing education to conduct a survey of students attending the University Center in the School of Education, and set up files on those students for record keeping purposes in order that the School of Education could determine what students were attending the University Center. Dr. Langley considered that secretarial work and failed to

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[41] The court finds it curious that the problems in this connection appear from the exhibits presented by plaintiff to have occurred in the spring semester 1988 and the spring and fall semesters of 1990. There is nothing to suggest that this was a problem at any time during 1989 or 1991.

complete that task. She further testified that Dr. Langley complained once when she had asked her to transport records and files to the University Center, apparently because she did not consider that to be within her job description.[42]

The court has reviewed the exhibits presented by plaintiff and cannot conclude that they substantiate her complaints relative to Dr. Mills' task assignments. Any conflict that has resulted is, in the court's opinion, the result of an apparent difference of opinion between Dr. Mills and Dr. Langley as to the breadth of plaintiff's job description, with plaintiff viewing her duties and responsibilities perhaps more narrowly than she should.[43]

Merit Pay

Dr. Langley further asserts in this action that she has been denied merit pay increases and denied the opportunity to participate in activities and perform services for

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[42] Dr. Mills further testified that she attempted to meet with Dr. Langley on a weekly basis to "touch base" with her on what was happening with Continuing Education so that they could discuss strategies and what needed to be done on that front, and toward that end, she scheduled meetings with Dr. Langley for each week. While Dr. Mills cancelled three of those meetings herself, Dr. Langley failed to attend most of the remaining meetings, calling in with various excuses which prevented her from attending. Dr. Hall similarly testified that plaintiff has had a tendency to miss many departmental meetings, telephoning an excuse at the last moment.

[43] Though the settlement agreement did list specific job duties, it also required plaintiff "[t]o perform all other academic related tasks as assigned by the Dean of the School of Education."

which she would earn points toward merit pay. In particular, she contends that Dr. Mills prevented her from accumulating merit pay points by not appointing her to chair committees, Dr. Rush denied her a sabbatical which would have allowed her to perform research and publish a book which would have generated merit pay points, and she was denied the opportunity to chair a grant for which she would have received merit pay points. The court cannot conclude that Dr. Langley has been discriminated against or retaliated against in the manner complained of.

Dr. Langley acknowledges that she, along with eleven others in the School of Education, was awarded a merit pay increase of $500 in 1987. She asserts, however, that she should have received $900 rather than $500, as did three others, Dr. Anita Hall, Dr. Reuben Gentry and Dr. Earl Leggette, all black, since she had the same number of merit pay points as did Dr. Hall. Plaintiff has not, however, pointed to any evidence to substantiate her assertion that she had accumulated sufficient merit pay points to qualify her for the greater salary increase; that is, there is no evidence to demonstrate that she and Dr. Hall had the same number of merit pay points.[44] And she does not dispute Dr. Mills' testimony that no faculty member has received a merit pay increase since 1987.

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[44] In a letter to Dr. Hefner, Dr. Langley complained that she had 18.5 merit pay points yet received the same pay increase as persons with less than 10 merit pay points. She has not shown, however, that she had as many points as those persons who received the higher increase.

Dr. Mills testified that it is certainly possible for a faculty member to receive a merit pay increase without serving as a committee chairperson, and the evidence of record does not reveal that plaintiff was somehow singled out for exclusion from chairing School of Education committees. Many faculty members, both black and white, have not been appointed to chair committees.

Plaintiff has not offered sufficient evidence to permit the court to evaluate her contention that she was denied the opportunity to chair a grant which would have led to merit pay, and there is, in any event, no evidence to suggest that she has been alone in not receiving merit pay increases.

Sabbatical Leave

Moreover, while the evidence does show that plaintiff's request for a sabbatical leave with full salary for the 1986 fall semester was denied, the reason for that denial, as reflected by the available documentary evidence, was a lack of funding for the University's sabbatical leave program. Plaintiff was advised by letter dated May 20, 1986 from Dr. William Rush, then chairperson of her department, that the sabbatical leave program was not "currently funded," and that the faculty members would be informed "when funding for the program is reactivated." Dr. Langley was invited to resubmit her application at such time as funding became available. Plaintiff implicitly suggests that she was never advised the sabbatical program had been reactivated, yet other faculty members were granted sabbaticals in subsequent years. The proof shows, however, that sabbaticals were not granted only to

black faculty members, but to minorities as well, including a white female, Margaret Wodetski, and an oriental male, Ben Lee Lin. Plaintiff has not attempted to show that other minority faculty members applied for but were denied sabbaticals. And she has not claimed that she was unaware that sabbaticals were being granted nor does she assert that she ever resubmitted her application for sabbatical leave.

Travel

A further example of retaliation and/or discrimination cited by Dr. Langley is Dr. Mills' having once refused to pay her for professional travel. Dr. Langley testified that she submitted on April 7, 1989 a request for payment of travel expenses for attending a National Headstart Conference which was to be held in Atlanta, Georgia from April 19 through April 21. Dr. Hall promptly signed the request. Only after plaintiff returned from the trip was she advised by Dr. Mills that payment would not be forthcoming since "all funds for travel for this academic year have already been allocated." Plaintiff states that she was eventually paid out of Dr. Witherspoon's budget, after she wrote Dr. Witherspoon and Dr. Hefner complaining that she had not been paid.

Plaintiff claims that Dr. Mills' refusal to pay her for travel expenses for a professional endeavor was because of her race and/or because of her having previously filed EEOC charges and a lawsuit against the University. In support of her claim, plaintiff cites a number of documentary exhibits which she states prove that travel money was available in the budget since payment for travel of

other faculty members was approved. However, many of the documents relied on by plaintiff in support of her contention show approval by Dr. Hall, but contain no indication that they were ever approved by Dr. Mills.[45] Many of the other documents cited by plaintiff reflect requests for payment of travel expenses either earlier in that fiscal year,[46] or in the fiscal year following that in which her request for travel expenses was denied,[47] and some of the travel expenses were approved for payment

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[45] For example, Dr. Hall herself applied for approval of travel expenses in April 1989 to attend the International Reading Association Conference in New Orleans, Louisiana, and in April 1989, Vivian Taylor applied for travel expenses to present a paper at the International Reading Association Conference in New Orleans. There is no indication that Dr. Mills approved payment of these travel expenses.

[46] The documentary exhibits show that Dr. Hall, for example in November 1988 applied for approval of travel expenses of $18.00 for an administrative retreat and conference for department chairs and assistant deans.

[47] Dr. Hall, for example, in the fall of 1989 approved the application of Franklin Jefferson, a black professor, for travel expenses to travel to Dayton, Ohio to present a paper at the Association for the Study of Afro-American Life and History. And she approved Ivory Phillips' application for travel expenses to travel to Dayton, Ohio. Dr. Hall further approved Dr. Georgia Napier's and Dr. Boyne Coat's applications in the fall of 1989 to travel to Arkansas to present papers at MSERA. Nothing in the documents suggests that Dr. Mills approved any of these applications.

And in the fall of 1989, Dr. Mills and Dr. Hall chartered a bus to transport School of Education faculty members to the funeral of a co-worker in Louisiana. Also approved in the fall of 1989 was travel by Dr. T. Lee Napier to travel to Arkansas, though the purpose of the travel is not indicated.

from sources other than the School of Education's budget.[48] Out of the many documents cited by plaintiff, the only application for travel expenses submitted by plaintiff which reflects final approval by all necessary administrators during the period of time in which her application for expenses was denied is that of Virginia Gambrell, for whom travel expenses to New Orleans were approved in April 1989. The court is unable to conclude from this lone exhibit, about which there was no testimony and which is not on its face reflective of the nature or purpose of travel for which expenses were approved, that plaintiff was discriminated or retaliated against by Dr. Mills' refusal to approve her request for travel expenses.

Double Registration Duties

Plaintiff cites as yet another instance or example of discrimination and retaliation the fact that she was on two occasions assigned burdensome registration duties, something which did not occur in the case of any other professor. She asserts that during the fall semester 1987, she was assigned by Dr. Rush to work registration on the main campus of Jackson State during the day and was assigned to work night registration at the University Center by Dr. Mills, which resulted in her working double

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[48] In the fall of 1989 and the spring of 1990, Dr. Mills approved travel expenses for Dr. Hall to attend the Leadership and Supervisory Skills for Women Conference out of the Kenan Project budget. And again in January 1990, Dr. Hall requested payment out of the Kenan Project budget for travel to North Carolina to attend a mid-year assessment and planning meeting for the Kenan Program.

registration duty, all day at the main campus and all night at the University Center. Dr. Langley wrote to Dr. Mills advising her that the "lack of communication" between Dr. Mills and Dr. Rush had resulted in her working double registration duty and asked that she communicate with Dr. Rush to avoid the same double scheduling for the spring semester. Dr. Langley complains that despite her complaint to Dr. Mills, she was again assigned twelve hours' registration duty at the University Center for the summer semester of 1988. She acknowledges that two other professors were assigned to work those same hours, but asserts that one of those persons, Dr. Gaulden, had been assigned by her dean to work handling tuition money for Continuing Education and was not available to assist with registration during the hours assigned, and the other, Dr. J. Shouts, "doesn't work that much[,] [s]o he wasn't there."

The initial assignment of plaintiff to work two registrations during the fall of 1987 appears to have been the result of a lack of communication between the assigning persons, Drs. Rush and Mills.[49] Regarding the twelve-hour assignment in the summer of 1988, defendant presented credible testimony that none of the faculty persons assigned to work those hours were actually expected to work the entire twelve hours; rather, it was expected that

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[49] The court notes that while plaintiff complained that she had to work "all day" at the main campus during registration that semester, the schedule for registration assignments shows that she was assigned to work only in the morning, from 8:30 to 12:00.

those assigned would work out a schedule among themselves. And there has been no showing that any of plaintiff's supervisors was aware that the others assigned to work registration with her would not be available to assist with registration. Plaintiff has not proved discrimination or retaliation in connection with the assignment of registration duties.

Racial Environment

Dr. Langley, and other witnesses, recounted a number of instances in which they perceived that race had played a role in decisions made or racial remarks were made which indicated that whites are unwelcome at Jackson State.

Dr. Langley testified that she did not return to Jackson State when school first started in the fall semester of 1987 because she was in the process of concluding her litigation with the University and was in the process of working out the terms of her settlement agreement. At the request of her then academic vice-president, Dr. Frank Black, she met with Dr. Mills, who had just been hired by the University. According to plaintiff's testimony, Dr. Mills was

> very hostile towards me. She was very unhappy to see me. . . . She told me that she did not like the fact that I was assigned to teach in the School of Education since I had filed a suit against the University. The dean of continuing education was white, and she told me that she felt that I had all of my loyalties toward the white dean instead of to her and I would not be able to successfully work for her and suggested

> that I transfer, request a transfer to move over to work for the white dean instead of for her.
>
> I explained my settlement agreement to her and gave her a copy of it, and she made some statement to me that the settlement agreement was done by a judge and she didn't have to follow it. . . . And she told me that nobody in the School of Education liked me, and that she did not feel that she could support me and work effectively with the other people.

Dr. Mills' recollection of her first meeting with plaintiff was nothing like that described by plaintiff. Dr. Mills testified that she met with Dr. Langley in late August 1987 and discussed with plaintiff her role as coordinator of continuing education for the School of Education, including Dr. Mills' perceptions as to the needs of the School of Education and how Dr. Langley might help facilitate those needs through her role as coordinator of continuing education. Dr. Mills testified that she was not aware at that time of the specifics of Dr. Langley's previous controversy with the University, and knew only that there had been a lawsuit. She denied having suggested that plaintiff should be working for a white dean, as claimed by plaintiff, or that there was any conflict whatsoever. In fact, according to Dr. Mills, plaintiff appeared during the meeting to be very enthusiastic and excited about her job, and expressed that Dr. Mills could be assured of her loyalties to the School of Education.

In correspondence to Dr. Mills following their first meeting, dated August 28, 1987, Dr. Langley undertook to

> assure[ ] [Dr. Mills] that as the Coordinator of CED for the School of Education, my total loyalties will be with you as the Dean of the School of Education. My efforts will be geared at all times towards forwarding the School of Education through assisting in the coordination and implementation of a positive working relationship between the School of Education and The School of Continuing Education. . . .

In another letter to Dr. Mills following a September 17, 1987 meeting between the two, Dr. Langley thanked Dr. Mills for

> the enthusiast [sic] support and warm strokes you gave me during our conference on September 17, 1987, concerning my position as Coordinator of CED for the School of Education. This type of reception and appreciation of one's efforts certainly increases productivity and should ultimately increase faculty morale in the school.

But after the commencement of the following semester, spring 1988, Dr. Langley complained to Dr. Witherspoon that Dr. Mills, among other things, had been "extremely negative and expressed resentful [sic] of me, Gordon, and CE in general" during their initial meeting on August 27, 1987.

The court finds it difficult to credit plaintiff's testimony concerning the specific remarks which she attributes to Dr. Mills in their initial meeting relating to her race and her litigation with the University in view of the correspondence from plaintiff following that meeting. While that correspondence intimates that Dr. Mills may have expressed some concern over plaintiff's loyalties to

the School of Education, nothing more of the comments allegedly made by Dr. Mills is suggested. And in plaintiff's subsequent complaint to Dr. Witherspoon, she said nothing of such comments by Dr. Mills. Plaintiff's correspondence to Dr. Mills contains no hint of discord or dissention, and indeed lauds Dr. Mills for her "warm strokes," "enthusiastic support" and appreciation of plaintiff's efforts. In the court's view, had Dr. Mills made the statements attributed to her by plaintiff, who has demonstrated a proclivity for documenting every alleged instance of perceived discrimination or retaliation, she would certainly have made a written or verbal report of the incident.

It does appear that many – both faculty and students – have complained that Dr. Mills is temperamental, explosive and rude and that she has at times been less than diplomatic. Dr. Sherry Briggs, a white professor in the School of Education, so testified at trial. Dr. Briggs, however, stated that while she did not agree with her style, she did not think that Dr. Mills' behavior had anything to do with race.[50]

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[50] Dr. Briggs complained that Dr. Mills had once tried to reassign her and give her job to a black professor and that Dr. Mills had changed the points reflected on her application for merit pay in order to prevent her from receiving a merit pay increase. The evidence showed, though, that Dr. Mills, in the course of reorganizing the School of Education, transferred Dr. Briggs from a special education position to a counseling position since Dr. Briggs' application for employment with Jackson State reflected that her expertise was in counseling and that she sought a job in counseling. When Dr. Mills was made aware of Dr. Briggs' objection to the transfer, she allowed her to remain in her original position. Regarding the merit pay application, the

Dr. Langley further described a conversation with Dr. Hall during the 1989 commencement activities of Jackson State at which Lewis Sullivan, Secretary of Health and Human Services and a black, gave the commencement address. Dr. Langley testified that Dr. Sullivan opened the program by welcoming "black students, black parents and black faculty," and essentially devoted his address to blacks by speaking of the educational accomplishments of blacks. Dr. Langley was prompted by his remarks and theme to comment to Dr. Hall, who was seated next to her, that it would be nice if a speaker at Jackson State could speak to an audience without mentioning race. Dr. Hall, she claimed, responded with something to the effect of "Jackson State University is a black school. It's for black students. It is not for white students and white students and the faculty really do not belong there," or "This is a black college. . . . We will always keep it a black institution, and white faculty and white students have no place here." Plaintiff's recollection of Dr. Sullivan's address proved to be inaccurate in that he did not welcome only black participants and members of the audience, but rather greeted the students, faculty, family and friends. His address did, though, focus on the achievements of black [sic] in education. Dr. Hall credibly recalled Dr. Langley's having remarked to her during the address that she found his comments inappropriate, to which Dr. Hall responded that she considered the address was appropriate since Jackson State was an historically black institution and the majority of the graduates were

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proof showed that the change in the points was made because it was learned that points had been given in error for publication; Dr. Briggs had not published a book.

black, but she specifically denied having said that whites did not belong at the University.

Credible evidence, though, has been presented of a number of race-based remarks directed toward and concerning white students and faculty members, including this plaintiff, which reveal a common theme: Jackson State is a black institution at which whites do not belong. Indeed, plaintiff testified that "many faculty members at Jackson State that are black . . . give you the impression that they feel that it is a black university and whites should not be there." For example, plaintiff testified that on one occasion in the spring of 1988, she walked into the office of ReJohnna Brown, a black co-worker and friend, and overheard another black co-worker, Ophelia Kelly, telling Dr. Brown that Dr. Brown was black and should not associate with "that white bitch that's your friend." Further, Dr. Langley testified that Dr. Hall has told her that "she doesn't see why black students feel that they need to have white advisors" and that "black people are overlooked at Jackson State to give white faculty more rights." Dr. Langley recounted an instance in which she had requested that Dr. Hall reschedule a course because the students enrolled in the course expressed that they would have difficulty meeting the course at the time for which it was scheduled. According to Dr. Langley's testimony, after repeatedly asking Dr. Hall to reschedule the course, Dr. Hall finally told her "she was not rescheduling it because she was not going to give a white faculty member advantages over black faculty members in recruiting classes."

Prior to commencement in the summer of 1991, Dr. Hall, according to Dr. Langley, told her that "she was not

happy that in the spring commencement we had three doctoral students graduate and I [Dr. Langley] chaired all of their papers and that was not good because it looked like that I had too much visibility, something to that effect." And during the commencement exercises, Dr. Hall "said something to me [Dr. Langley] about that this was just not going to happen again, that we were not going to have all of these black students working with white faculty." Dr. Langley also recalled hearing Dr. Hall, at a time before she became department head, questioning black students about the racial compensation of their doctoral committees. Similarly, Dr. Marie Roos, a white elementary education professor at Jackson State, testified that Dr. Hall indicated to her that she would prefer an all black institution so there would be less competition between blacks and whites and further gave her the impression that Dr. Hall was not very receptive to the white faculty members.[51]

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[51] Dr. Roos also testified that Dr. Hall had once charged her with racism and discrimination for using the term "gals" to refer to her female students and teaching her students about views on "black dialect" which Dr. Hall considered derogatory. Dr. Roos explained in her defense that "gals" was a term commonly used in the midwest, where she was from, and that she was not aware that the term had negative connotations for black women. She further explained that the statement she had made concerning black dialect was derived directly from the textbook and was the view of the author of that book, not her own. Dr. Roos admitted that Dr. Hall's conversation with her about these matters was prompted by a complaint from one of Dr. Roos' students, who had advised Dr. Hall that she considered Dr. Roos' comments racist. Dr. Roos also testified that Dr. Hall did not "take a position" on the matter and in fact, had "complimented [her] on [her] standards."

John Hardy, a former white Jackson State student who was forced to leave the doctoral program approximately ten years ago for personal reasons, testified that he has recently encountered difficulties in attempting to straighten out problems with his transcript so that he

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Dr. Roos also stated in her testimony that she believed that a black professor in her department, Dr. Levar Kemp, had received preferential treatment in that he had been provided an office and better furnishings than she, had been provided a computer, and was paid the same salary as she though he was only an associate professor and she a full professor. The evidence revealed, however, that Dr. Kemp, though hired later than Dr. Roos, arrived at the Jackson State campus a month before she did, and was given the office that was then available. Indeed, Dr. Roos admitted that there was a problem with overcrowding in the education building and that she was not the only person housed in a temporary office. Further, the school did not provide Dr. Kemp with a computer; the computer he used was his own, or was on loan from a friend. And Dr. Kemp was not, in fact, paid the same salary as Dr. Roos, but received $1000 less per year.

Dr. Roos complained additionally that Dr. Mills sends Dr. Kemp effusive letters when he publishes an article, but that Dr. Mills, while aware of Dr. Roos' publications, has not lauded her work in a similar manner. In this respect, Dr. Mills testified that it is her practice to send a letter of congratulations to faculty members who send her a copy of an article which they have had published in an effort to encourage further publication by the faculty. Dr. Kemp, she explained, routinely sent her copies of his publications whereas Dr. Roos did so only once. And on that one occasion when Dr. Roos did send her a copy of her publication, Dr. Mills wrote her a congratulatory letter.

Though the court does not consider that these specific instances recounted by Dr. Roos are indicative of racial discrimination, the court does credit her testimony concerning Hall's remarks concerning whites at Jackson State. Those remarks attributed to Dr. Hall are in keeping with statements ascribed to her by others.

may secure readmission. He attributes the problems he has experienced to the fact that Dr. Langley was his advisor, and that he filed an affidavit on Dr. Langley's behalf during her previous litigation with the University. Mr. Hardy testified that Dr. E. C. Foster, the associate dean of the graduate school, has recently been reluctant to give him his graduate file, fearing that Mr. Hardy "might use it for some legal purpose," and has advised him that "Jackson State was a black school," and is "not for [him]." Mr. Hardy also testified that during his tenure at the University, Effie Clay, a member of the undergraduate staff in the School of Education, had expressed that she was "really worried about these white people taking over the University," when Drs. Langley and Napier became involved in a student organization of which Clay was the faculty sponsor. And he testified that when he, on a recent occasion, attempted to call Dr. Mills to talk about the difficulties he was having with his transcript and admission, telephoned her office and the person answering the telephone asked what was his race. Exhibits also reflect that a white student, Lynn Masters, once observed that Dr. Hall, while monitoring comprehensive exams, marked each student's race with a "B" or "W" as he or she entered the room where the exam was being conducted. And there are other instances of white students being told by various other persons at Jackson State in response to complaints by those students that they might consider attending school elsewhere.

Conclusions

In order to establish a prima facie claim of retaliation under Title VII, plaintiff must show three things: (1) that

she engaged in an activity protected by Title VII; (2) that an adverse employment action followed; and (3) that there was a causal connection between the activity and the adverse action. *Collins v. Baptist Memorial Geriatraic* [sic] *Ctr.*, 937 F.2d 190 (5th Cir. 1991). That the first of the three elements is satisfied in the case at bar is clear. And the court will assume for the sake of argument that plaintiff has suffered "adverse" employment actions, though there is some question as to whether plaintiff's various complaints actually qualify as adverse employment actions. But the court is not persuaded that Dr. Langley has sustained her burden to prove that there exists a causal connection between her previous EEOC charges and Title VII action and the various hardships she has encountered at Jackson State.

"The 'factual inquiry' in a Title VII (discrimination) case is '[whether] the defendant intentionally discriminated against the plaintiff. In other words, is 'the employer . . . treating "some people less favorably than others because of their face, color, religion, sex, or national origin.' " *United States Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983). Regarding certain of her allegations, plaintiff has failed to show that she was treated less favorably than non-minorities at Jackson State. And though in some instances, she was treated less favorably than other employees, Dr. Langley has not shown that such treatment in those instances was race-based.

The court is, of course, cognizant that plaintiff need not establish that her protected activity or her race for her retaliation and discrimination claims, respectively, was the sole factor motivating defendant's conduct, but rather

that it was "a" motivating factor. Nevertheless, the court is unable to conclude on the evidence presented that any treatment received by Dr. Langley resulted from anything other than mistakes by administrators caused by their ineptness or simple inefficiency and legitimate concerns by her supervisors over certain of plaintiff's activities and the proper functioning of the school. Plaintiff's claim based on retaliation must, therefore, fail.

It is now well recognized that claims of discrimination on the basis of race, ethnicity or gender due to the existence of a hostile or abusive work environment are cognizable under Title VII. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65-66 (1986) ("Title VII affords an environment free from discriminatory intimidation, ridicule and insult."); *Rogers v. EEOC*, 454 F.2d 234 (5th Cir. 1971), *cert. denied*, 406 U.S. 957 (1972) (Title VII "sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination."). To establish a prima facie case of racial harassment under a hostile environment theory, plaintiff must show that she "belongs to a protected group, that she was the subject of unwelcome [racial] harassment, that the harassment was based on [race], that the harassment has affected a term or condition or privilege of employment, and if appropriate, some ground to hold the employer liable." *Collins*, 937 F.2d at 195. In *Collins*, the Fifth Circuit recognized that "[p]sychological well-being is a term, condition, or privilege of employment within the meaning of Title VII," *id.*, but cautioned that " 'not all workplace conduct that may be described as "harassment" affects a "term, condition, or privilege" of employment within the meaning of Title VII.' " *Id.* at

195-96 (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 66-67 (1986). A claim based on psychological harm

> "requires a commensurately higher showing that the [racially] harassing conduct was pervasive and destructive of the work environment." And harassing incidents not involving [Dr. Langley] herself will not sustain her claim, unless there is evidence that the incidents involving other [minority] employees "affected [her own] psychological well-being."

Id. (quoting *Jones v. Flagship Int'l*, 793 F.2d 714, 721-22 (5th Cir. 1987).

Title VII does not mandate a working environment totally free of racial incident or race consciousness, *cf. Hall v. Gus Construction Co., Inc.*, 842 F.2d 1010, 1017 (8th Cir. 1988) ("Title VII does not mandate an employment environment worthy of a Victorian salon."), and thus, to sustain her claim of a hostile employment environment, plaintiff must provide evidence of pervasive offensive conduct. The point of the court's inquiry in evaluating a hostile work environment claim is to determine whether, under the totality of the circumstances, there is "a hostile or abusive working *environment* which is severe enough to affect the psychological stability of a minority employee," *Andrews v. City of Philadelphia*, 895 F.2d 1469 (3d Cir. 1990); *Vaughn v. Pool Offshore Co.*, 683 F.2d 922, 924 (5th Cir. 1982) (quoting *Rogers*) (use of " 'repeated' [racially abusive language] . . . made [plaintiff] feel unwanted and uncomfortable in his surroundings.' "). Toward that end, the court may consider a number of factors, including:

> the nature of the alleged harassment, the background and experience of the plaintiff, her co-workers, and supervisors, the totality of the physical environment of the plaintiff's work area, [and] the lexicon of [racial incidents] that pervaded the environment of the workplace both before and after the plaintiff's introduction into its environs, coupled with the reasonable expectations of the plaintiff upon voluntarily entering that environment.

Brooms v. Regal Tube Co., 881 F.2d 412, 419 (7th [sic] 1989); *see also Daniels v. Essex Group, Inc.*, 937 F.2d 1264, 1274 (7th Cir. 1991) (quoting *Brooms*). In the case at bar, it is clear that there is definite race consciousness on the part of certain faculty members and supervisors at Jackson State. At times, it borders on resentment of and animosity toward minority faculty and students. This is evidenced by uncalled for and unnecessary remarks along the lines of "whites have no place at this black University." The court cannot conclude, though, having considered the evidence in this case in its totality, that the atmosphere in which plaintiff has worked at Jackson State is, as she contends, racially hostile to such an extent as would permit relief by this court. It appears that Dr. Langley is an idealist who expects that because she is unfettered by racial resentment, so too should others be. Plaintiff chose to work at Jackson State, knowing that the University was an historically black institution and knowing that it remained an almost totally black institution. It is likely that her expectations that the working environment would be free from all consciousness of race were too high and too idealistic. Of course, the fact that she chose to work at Jackson State does not mean that she should be

required to endure any and all forms of racial harassment. But here, the environment does not appear to be pervaded by racial harassment.

In summary, it is clear from the evidence presented that the relationship between Dr. Langley and the administrators at Jackson State is anything but harmonious. It is marked by conflict and strife. Dr. Langley obviously genuinely perceives that she is a victim of discrimination and retaliation and is constantly on guard against conduct which she believes sustains her perception. As reflected by the wealth of correspondence generated by Dr. Langley to her supervisors and school administrators, she interprets practically every decision concerning her as discriminatory and retaliatory and constantly complains that her settlement agreement is being violated and threatens legal action if she is not treated properly.[52]

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[52] For example, in her February 1988 Agenda for a conference with Dr. Witherspoon, Dr. Langley described "Problems With Dean Mills," and threatened "board, publicity, court," if her demands for a resolution of her problems were not granted. In June 1988, she wrote to Dr. Witherspoon complaining of Dr. Mills' failure to approve workshop forms and stated:

> Please be advised that based on the latest retaliatory and/or discriminatory actions by Jackson State University, I have been forced to request assistance from Dr. Ray Cleere, Commissioner of Higher Education, in a desperate attempt to avoid further litigation actions against the University. Upon Dr. Cleere's request, I have scheduled an appointment . . . with Mr. Ed Noble, Assistant Attorney General, to review any and all violations of my Settlement Agreement . . . and the retaliatory and/or discriminatory treatment I have been subject to since the signing of this agreement on September 4, 1987.

Jackson State perceives that it has, in a sense, become plaintiff's victim as a result of her threats. Dr. Mills testified that there was "just a constant conflict and battle" with Dr. Langley who would threaten legal action every time she was asked to do something. She would

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In May 1989, after Dr. Langley failed in her attempts to have Dr. Hall reschedule a course, she wrote to Dr. Witherspoon complaining of Dr. Hall's "Uncooperative attitude," stating that she believed that her class had been assigned at a time "to assure its not making."

In September 1989, when plaintiff believed she had not been fully and timely compensated for her work of that summer, she wrote to Dr. Hall that "Certainly . . . it is discriminatory or retaliatory for [her] not to be . . . reimbursed" at the same time as other faculty members. In November 1989, Dr. Langley wrote to Dr. Mills concerning her delay in submitting workshop forms for entry into the school's computer for Dr. Langley's workshop, and stated "If this request is not honored, I will have no option other than to instigate immediate legal action to protect both myself and the twenty-five students involved from the ongoing actions of retaliation, discrimination, and violation of my constitutional rights that have occurred since my previous legal actions and increased since my filing of EEOC Charge Number 131900072 . . . and my receiving a Notice of Right To Sue. . . . "

During May 1990, when the certified letter sent to Dr. Langley at the University Center was lost, or not delivered to her, Dr. Strobel wrote to Dr. Mills that "Dr. Langley has contacted legal counsel in an effort to retrieve this letter. . . . "

In August 1991, Dr. Langley wrote to Dr. Hall concerning Dr. Hall's late withdrawal from a student's, Pollia Griffin's doctoral committee, that "I regard your treatment of this student and dissertation as another opportunity to discredit me as a professional and as a doctoral dissertation committee chair."

There are many more instances of Dr. Langley's having complained of her treatment as discriminatory and/or retaliatory and having threatened legal action.

protest assignments as "not [being] part of my court settlement. I'll call my lawyer." Indeed, Dr. Mills believed that because of its experience with Dr. Langley, and in particular the earlier lawsuit and her threats, the University was in continuous fear of offending her and thereby precipitating further legal action and thus shied away from taking what she thought were necessary and appropriate actions to curb Dr. Langley's excesses and unprofessional actions for fear she would make good on her threats. As Dr. Mills explained, "the University doesn't like lawsuits." Dr. Mills expressed that she would have preferred to have been able to broach her concerns about Dr. Langley with Dr. Langley and discuss problems with her. But Dr. Langley, she said, has made that impossible, for any criticism would be viewed by Dr. Langley as retaliation and discrimination and racial harassment.

Though the dissension between Dr. Langley and Jackson State administrators is manifest, the court cannot conclude that plaintiff has sustained her burden of persuasion to demonstrate that any treatment she has received has been the result of retaliation and/or discrimination or that she has been subjected to a hostile racial environment such as would entitle her to relief before this court. Plaintiff is, however, entitled to recover compensation for her work as continuing education coordinator from and after January 1990 inasmuch as the proof showed that defendant failed to grant her the twenty-five percent reduction set forth in her settlement agreement with the University for those services.

Based on the foregoing, it is ordered that plaintiff is entitled to recover the sums described and that the complaint be otherwise dismissed with prejudice.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

ORDERED this 13th day of April, 1992.

/s/ Tom S. Lee
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY	PLAINTIFF
VS.	
JACKSON STATE UNIVERSITY and DR. HERMAN SMITH IN HIS OFFICIAL CAPACITY	CIVIL ACTION NO. J86-0206(L)
	DEFENDANTS
CONSOLIDATED WITH	
DR. BETTYE R. LANGLEY	PLAINTIFF
VS.	
JACKSON STATE UNIVERSITY and DR. HERMAN SMITH IN HIS OFFICIAL CAPACITY	CIVIL ACTION NO. J90-0038(L)
	DEFENDANTS

ORDER

(Filed Jun 09, 1992)

This cause is before the court on the motion of defendant Jackson State University for reconsideration and its objections to an order which plaintiff has submitted and proposed for entry by the court. Jackson State seeks reconsideration of that part of this court's memorandum opinion and order of April 13, 1992 finding that the course load for doctoral faculty at Jackson State was nine hours. This court made detailed factual findings as to this issue, and now concludes that, contrary to defendant's urging, those findings are supported by the record in this cause.

The order proposed by plaintiff to be entered in this cause provides for an award of $23,429.38, representing

twenty-five percent of Dr. Langley's annual salary for a period beginning in January 1990. Defendant objects that the order proposed by plaintiffs cannot properly be entered for two reasons. First, according to defendant, the question whether Dr. Langley was given the twenty-five percent reduction in her teaching load called for in the settlement agreement between her and Jackson State was not made an issue in this lawsuit, and secondly, defendant argues, even if the issue was properly raised, the court lacks any evidentiary basis upon which to calculate the compensation due to plaintiff since she presented no proof as to her current or past salary. The court concludes otherwise. Dr. Langley specifically raised the issue of whether she had been paid for teaching an overload, and the court concluded that she had been required to teach an overload to the extent that she was not granted the agreed twenty-five percent reduction for her duties as continuing education coordinator. Further, there is documentary evidence in the record as to plaintiff's salary. Defendant has made no objection to the plaintiff's method of computing her damages, but rather has solely objected to the alleged lack of evidentiary support for that computation. Because the court concludes that there is, in fact, such evidentiary support, the court further concludes that defendant's objections to the proposed order are without merit.

Based on the foregoing, it is ordered that the motion of defendant Jackson State University is not well taken and should be denied.

ORDERED this 9th day of June, 1992.

/s/ Tom S. Lee
UNITED STATES DISTRICT
JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY	PLAINTIFF
VS.	
JACKSON STATE UNIVERSITY and DR. HERMAN SMITH IN HIS OFFICIAL CAPACITY	CIVIL ACTION NO. J86-0206(L)
	DEFENDANTS
CONSOLIDATED WITH	
DR. BETTYE R. LANGLEY	PLAINTIFF
VS.	
JACKSON STATE UNIVERSITY and DR. HERMAN SMITH IN HIS OFFICIAL CAPACITY	CIVIL ACTION NO. J90-0038(L)
	DEFENDANTS

JUDGMENT

(Filed Jun 09, 1992)

This action came on for trial before the Court, Honorable Tom S. Lee, District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Plaintiff Dr. Bettye R. Langley recover from the Defendants Jackson State University and Dr. Herman Smith in his official capacity the sum of Twenty-Three Thousand Four Hundred Twenty-Nine and 38/100 Dollars ($23,429.38), with interest thereon as provided by law, and her costs of action, and the Complaint be otherwise dismissed with prejudice.

ORDERED this the 9th day of June, 1992.

/s/ Tom S. Lee
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7461

DR. BETTYE R. LANGLEY,
Plaintiff-Appellee,
Cross-Appellant,

versus

JACKSON STATE UNIVERSITY, and
DR. HERMAN SMITH, in his
Official Capacity,

Defendants-Appellants,
Cross-Appellees.

Appeals from the United States District Court
for the Southern District of Mississippi

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(Opinion 02/28/94, 5 Cir., 1994, ___F.3d___)

(Mar 30, 1994)

Before DUHÉ and EMILIO M. GARZA, Circuit Judges, and BLACK,* District Judge.

PER CURIAM:

(x) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on

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*Chief Judge of the Southern District of Texas.

rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Emilio M. Garza
United States Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY, Plaintiff, v. JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER, in His Official Capacity, Defendants.	)	CIVIL ACTION NO. J86-0206(L)

SETTLEMENT AGREEMENT

The parties to this Agreement are Dr. Bettye R. Langley (hereafter referred to as Dr. Langley), Jackson State University (hereafter referred to as the University) and Dr. James A. Hefner (hereafter referred to as Dr. Hefner) who are also Plaintiff and Defendants, respectively, in Civil Action No. J86-0206(L), pending in the United States District Court for the Southern District of Mississippi, Jackson Division.

The parties enter into this Agreement after consulting with their chosen legal counsel, in order to resolve all disputes and claims which have arisen between them. They do so without duress and in reliance upon no promise, representation or undertaking which is not contained in this written Agreement or the Exhibits incorporated herein by reference. The parties agree that:

1.

Jackson State University acting through Dr. Hefner, its President, shall appoint Dr. Langley Coordinator of Continuing Education for the School of Education, beginning the Fall Semester of the 1987-88 academic year. Dr. Langley will continue to retain her present position as a tenured professor officially designated to teach in the School of Education doctoral program and to chair doctoral dissertations. Exhibit "A" to this Agreement describes Dr. Langley's new position and is incorporated herein by reference.

2.

Beginning with the academic year 1987-88 the University will issue Dr. Langley a standard nine month teaching Employment Contract for the sum of $34,865.32. This salary may be reduced only in keeping with a general faculty salary reduction in Dr. Langley's Department, School or in the University as a whole. This salary rate will be Plaintiff's base salary for future salary calculations.

3.

Upon execution of this Agreement, the University shall reimburse Dr. Langley's reasonable court costs and attorney fees in the amount of $14,755.15. Neither Dr. Hefner nor the University shall be required to reimburse any other litigation costs or attorney fees arising out of the settled claims.

4.

Promptly following this Agreement's execution, all parties will submit to the Honorable Tom S. Lee, United States District Judge, the Stipulation and Order attached hereto as Exhibit "B" and incorporated herein by reference and will take such further measures as may be required to secure the agreed dismissal.

5.

Dr. Langley hereby additionally waives, settles, compromises, releases and agrees to withdraw all constitutional or civil rights claims of whatever nature she possesses as of this date against Jackson State University, its officials, agents and representatives and/or Dr. James A. Hefner, his heirs, executors, beneficiaries, successors and assignees, all in consideration for the benefits of this Agreement and the Exhibits incorporated herein by reference.

6.

The University acknowledges its responsibility under 42 U.S.C. §2000e-3(a) with respect to Dr. Langley's future employment and faculty privileges and activities, including but not limited to workshops and seminars, sabbatical leaves, research, publications and other professional endeavors. Defendants release Plaintiff from any claims they may possess.

7.

Neither the University nor Dr. Hefner admit any wrongful act or legal liability to Dr. Langley but instead enter into this Agreement for the sole purpose of resolving finally all disputes between the parties as of this date.

This Agreement and the Exhibits incorporated herein by reference are the sole embodiment of the parties' compromise. They agree that each will comply with this Agreement in good faith and all will devote their best efforts toward maintaining a professional working relationship in the future.

This Agreement has been executed in three originals and each party has received one (1) copy.

/s/ Bettye R. Langley
DR. BETTYE R. LANGLEY;
DATE: _____

/s/ James A. Hefner
JACKSON STATE
UNIVERSITY
DATE: 9/4/87

/s/ James A. Hefner
DR. JAMES A. HEFNER
DATE: 9/4/87

EXHIBIT "A"

DUTIES AND RESPONSIBILITIES OF THE COORDINATOR OF CED FOR THE SCHOOL OF EDUCATION

The coordinator is directly responsible to the Dean of the School of Education.

Duties/Responsibilities

1. To plan and coordinate the implementation of CED related activities for the School of Education.
2. To work cooperatively with school of CED administrators to insure effective delivery of instruction to CED students.
3. To work with school and CED administrators to insure appropriate departmental representation during CED registration period.
4. To promote knowledge, appreciation and observation of the policies of the School and the University.
5. To propose policies and procedures designed to improve the articulation between the School of Education and Continued Education.
6. To develop, implement and maintain a system for providing periodic feedback to school administrators related to the effectiveness of the school's CED delivery system.
7. To assist department chairs with developing a pool of competent adjunct instructors from which the school may draw when necessary to meet its CED obligations.

8. To perform all other academic related tasks as assigned by the Dean of the School of Education.

Compensation

These functions will be carried out during the academic year (Fall, Spring Semesters) with a 25% released-time from the normal teaching load of those persons officially designated to teach in the doctoral program.

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

DR. BETTYE R. LANGLEY, Plaintiff, v. JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER, in His Official Capacity, Defendants.	)	CIVIL ACTION NO. J86-0206(L)

STIPULATION AND ORDER FOR DISMISSAL

BY STIPULATION of the undersigned representatives for all parties in this action, pursuant to Rule 41 of the Federal Rules of Civil Procedure, it is hereby finally

ordered, adjudged and decreed that the action is dismissed, with prejudice, with the parties to bear their own costs and attorney fees.

SO ORDERED this the ___ day of August, 1987.

HONORABLE TOM S. LEE

SO STIPULATED this the ___ day of August, 1987.

JOHN L. MAXEY, II
Cupit & Maxey
Post Office Box 22666
Jackson, Mississippi 39205
(601) 355-1553
Counsel for Plaintiff

KENNETH E. MILAM
R. PEPPER CRUTCHER, JR.
Miller, Milan & Moeller
Post Office Box 2366
Jackson, Mississippi 39225-2366
(601) 948-3131

Supreme Court, U.S.
FILED
JUL 15 1994
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No. 93-1832

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

DR. BETTYE R. LANGLEY,
Petitioner
v.
JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER
In His Official Capacity,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

MIKE MOORE
Attorney General
State of Mississippi

LEONARD MCCLELLAN *
MAUDINE G. ECKFORD
Special Assistant
Attorneys General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680
Counsel for Respondents

* Counsel of Record

July 15, 1994

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QUESTION PRESENTED

The question presented is whether the Fifth Circuit's decision is consistent with the precedent set by this Court in *Kokkonen v. Guardian Life Ins. Co. of America*, —— U.S. ——, 114 S.Ct. 1673 (1994).

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IN THE

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OCTOBER TERM, 1994

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DR. BETTYE R. LANGLEY,

Petitioner

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JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

INTRODUCTION

Respondents, Jackson State University and Dr. James Lyons,[1] respectfully request that this Court deny the petition for writ of certiorari seeking review of the opinion of the United States Court of Appeals for the Fifth Circuit. That opinion (App. 1-13) is reported at 14 F.3d 1070 (5th Cir. 1994). The Fifth Circuit held that a federal district court lacked jurisdiction to enforce a settlement agreement after dismissal of the action, with prejudice, where the agreement was neither approved by

---

[1] Dr. James Lyons is the present President of Jackson State University and has been substituted for Dr. James A. Hefner.

the Court nor incorporated in the dismissal order, and where the Court did not retain jurisdiction, absent some independent jurisdictional basis.

STATEMENT OF THE CASE

Petitioner, Dr. Bettye R. Langley, initially filed suit in March, 1986, in federal district court in Mississippi, alleging discrimination on the basis of race and retaliation for complaining of unlawful discrimination and filing previous Equal Employment Opportunity Commission (EEOC) charges. The District Court enjoined Respondents to permit petitioner to conduct a workshop without interference already scheduled for later in March. (App. at 23).

In September 1987, the parties reached a settlement agreement which was executed on September 4, 1987. (App. 121-127). The District Court signed a Stipulation and Order of Dismissal dismissing the action with prejudice on September 4, 1987. (App. 18). Respondents agree with Petitioner that the District Court did not retain jurisdiction to enforce the settlement agreement, nor did not incorporate the settlement into the Stipulation and Order of Dismissal.

In 1989, Petitioner filed another EEOC charge of discrimination alleging that Respondents were retaliating against her because of her previous EEOC charges and litigation, were violating the terms of her previous settlement agreement and subjecting her to a hostile work environment. On January 19, 1990, Petitioner then filed a second action charging Respondents with violations of Title VI and VII of the Civil Rights Act, 42 U.S.C. § 2000d and 2000e, respectively, and of the Fourteenth Amendment to the United States Constitution. Respondents answered this complaint on February 14, 1990. On February 27, 1990, Petitioner filed a motion to Enforce the Settlement Agreement in the first lawsuit. Thereafter, on March 2, 1990, Petitioner filed

a Motion to Consolidate the second lawsuit with the first lawsuit. Over Respondents' objection, the District Court entered an Order of Consolidation reopening the first lawsuit "for the purposes of adjudicating [Petitioner's] Verified Motion to Enforce Settlement Agreement." (App. at 21).

The District Court found from the evidence presented that the relationship between Petitioner and Respondents was marked by conflict and strife, that Petitioner perceived herself to be a victim of discrimination and retaliation and constantly on guard against any conduct she believed sustained her perception and that Respondents perceived that they had become a victim as a result of Petitioner's threats of legal action every time she was asked to do something. The District Court concluded that Petitioner failed to sustain her burden of persuasion to demonstrate that any treatment she had received was the result of retaliation and/or discrimination or that she had been subjected to a hostile racial environment that would entitle her to relief. (App. at 112). However, the Court did rule that Respondents had violated the terms of the 1987 settlement agreement by failing to grant Petitioner the twenty-five percent reduction in teaching load set forth in the settlement agreement for her work as continuing education coordinator, and granted Petitioner a $23,429.38 judgment for this work. (App. 112 and 114).

Respondents' request for reconsideration of the ruling that Respondents violated the 1987 Settlement Agreement was denied by Order dated June 9, 1992. (App. 114). In this Order, the District Court explained that Petitioner "specifically raised the issue of whether she had been paid for teaching an overload. . ." (App. 115) as a basis of her damage award in her second complaint alleging violations of Title VI, Title VII, and the Fourteenth Amendment. *Id.*

The Fifth Circuit vacated the District Court's determination that Respondents breached the Settlement Agreement because of the lack of subject matter jurisdiction over the settlement agreement. The Fifth Circuit ruled that Petitioner's Motion to Enforce the Settlement Agreement after dismissal of the action, with prejudice, was outside the Court's inherent power to enforce settlement agreements because the settlement agreement was neither approved of nor incorporated in the dismissal order, and the Court did not retain jurisdiction, absent federal jurisdiction independent of the action settled. *Dr. Bettye R. Langley v. Jackson State University, et al.*, 14 F.3d 1070 (5th Cir. 1994). The Fifth Circuit dismissed Dr. Langley's suit to enforce the agreement. However, it affirmed the District Court's findings that Dr. Langley failed to prove discrimination based upon her race or retaliation.

Dr. Langley is teaching at Respondent, Jackson State University, which comes under the management and control of the Board of Trustees of State Institutions of Higher Learning (IHL). Respondent is one of the eight senior state universities governed by IHL, the state agency responsible for supervising and controlling the State of Mississippi's public university system. Respondent is one of the three historically black institutions alleged as victims of racial discrimiation by plaintiffs in *U.S. v. Fordice*, 112 S.Ct. 2727 (1992).

REASONS FOR DENYING THE WRIT

I. THE FIFTH CIRCUIT'S DECISION TO DISMISS THE SUIT TO ENFORCE THE SETTLEMENT AGREEMENT IS CONSISTENT WITH THE RECENT DECISION IN *KOKKONEN v. GUARDIAN LIFE INS. CO OF AMERICA*, —— U.S. ——, 114 S.Ct. 1673 (1994).

In a unanimous decision, this Court in *Kokkonen v. Guardian Life Ins. Co. of America*, —— U.S. ——, 114 S.Ct. 1673 (1994), held that a federal district court lacks jurisdiction to enforce a settlement agreement where the court does not retain jurisdiction and does not incorporate the terms of the settlement into its decree, unless there is some independent basis for federal jurisdiction.

The procedural posture of the case *sub judice* is identical to that in *Kokkonen*. In *Kokkonen*, the parties entered a settlement agreement and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, executed a Stipulation and Order of Dismissal With Prejudice, which did not retain the court's jurisdiction nor refer to or incorporate the settlement agreement. There was no independent basis for federal jurisdiction. In the case *sub judice*, the parties entered a settlement agreement and later, pursuant to Rule 41 of the Federal Rules of Civil Procedure, executed a Stipulation and Order of Dismissal dismissing the action with prejudice. As conceded by Petitioner, the Court did not retain jurisdiction and did not incorporate or refer to the terms of the settlement in the Stipulation and Order of Dismissal (Pet. 3). There was no independent basis for federal jurisdiction. The Fifth Circuit's decision to dismiss Petitioner's suit to enforce the settlement agreement for lack of jurisdiction is consistent with this Court's recent decision in *Kokkonen, supra*.

Accordingly, this case presents no occasion for the exercise of certiorari jurisdiction by the Court.

II. THERE IS NO SPLIT AMONG THE CIRCUITS AS TO WHETHER THE FEDERAL COURTS HAVE JURISDICTION TO ENFORCE SETTLEMENT AGREEMENTS THAT ARE NEITHER APPROVED BY THE COURTS NOR INCORPORATED INTO A JUDICIAL DECREE ABSENT SOME INDEPENDENT JURISDICTIONAL BASIS.

Any split that may have existed among the circuits as to whether a federal district court had jurisdiction to enforce the terms of a settlement agreement that was neither approved by the court nor incorporated into the dismissal order was definitively resolved by this Court in *Kokkonen v. Guardian Life Insurance Company of America, supra.* Prior to this Court's decision in *Kokkonen*, the Sixth and Ninth Circuits had held that federal district courts had subject matter jurisdiction to entertain a post-dismissal action to enforce settlement agreements based upon the district courts' inherent power to protect their proceedings and indicate their authority. *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir. 1976), *Kokkonen, supra.* On the other hand, the Fourth, Fifth and Seventh Circuits had espoused the view that once a court dismisses an action with prejudice based upon a settlement agreement and that agreement is not approved by the court, incorporated into a decree or order and there is no retention of jurisdiction, any action to enforce the settlement agreement must be premised upon an independent basis of jurisdiction. *Fairfax Countrywide Citizens v. Fairfax County*, 571 F.2d 1299 (4th Cir. 1978), *cert. denied*, 439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d 706 (1978); *Langley v. Jackson State University, supra; McCall-Bey Franzen*, 777 F.2d 1178 (7th Cir. 1985).

Kokkonen, supra, foreclosed Petitioner's argument by holding that a federal district court lacks jurisdiction over a claim for breach of contract where part of the consideration was dismissal of an earlier federal suit. Where the parties desire the court to maintain jurisdic-

tion to enforce a settlement agreement, they may do so by making the agreement a part of the court's order or having the court to retain jurisdiction for the purpose of enforcing the agreement. In the case *sub judice,* the parties chose not to invoke the court's jurisdiction to enforce the settlement agreement by not incorporating the agreement into the order of dismissal.

All of the cases cited by Petitioner, with the exception of *Durrett v. Housing Authority of the City of Providence,* 896 F.2d 600 (1st Cir. 1990), a housing discrimination case, which Petitioner mistakenly characterizes as a Title VII action, involved the enforcement of Title VII pre-determination settlements and conciliation agreements in actions brought by the EEOC. The lower courts have held that although Title VII does not explicitly give the EEOC the authority to seek enforcement of conciliation agreements in federal court, it would frustrate congressional intent to deny the EEOC a forum in which to enforce such agreements. See *EEOC v. Safeway Stores, Inc.,* 714 F.2d 567, 2572 (5th Cir. 1983), *cert. denied,* 467 U.S. 1204, 104 S.Ct. 2384, 81 L.Ed.2d 343 (1984).

As this Court poignantly noted in *Kokkonen v. Guardian Life Insurance Company of America, supra,* "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute which is not to be expanded by judicial decree." *Id.* at 1675 (citations omitted). Therefore, petitioner's invitation to substantially expand the jurisdiction of the federal courts to enforce settlement agreements neither approved by the courts or incorporated into decrees or orders of dismissal must be rejected.

III. THE CASE SUB JUDICE DOES NOT PRESENT THE QUESTION OF WHETHER TITLE VII SETTLEMENTS SHOULD BE INTERPRETED UNDER FEDERAL OR STATE LAW.

The argument that Title VII settlements should be interpreted under federal rather than state law has no application in the *instant* case. Whether the federal courts interpret Title VII settlement agreements under state or federal law presupposes that the courts have jurisdiction to interpret such agreements. Since the Fifth Circuit found the district court lacked jurisdiction over the settlement agreement, it is inconsequential whether state or federal law should have been used to interpret the settlement agreement. Moreover, the Fifth Circuit's holding in *Langley, supra*, that the District Court lacked subject matter jurisdiction over the settlement agreement was vindicated by this Court's holding in *Kokkonen, supra*. Although Petitioner did not have the benefit of the *Kokkonen* decision when she filed her Petition herein, the argument that federal rather than state law should be used to interpret Title VII settlement agreements has clearly been foreclosed by lack of jurisdiction. Nevertheless, Respondents are constrained to distinguish the authorities relied upon by Petitioner.

In *Dhaliwal v. Woods Division, Hesston Corporation*, 930 F.2d 547 (7th Cir. 1991), involved a Title VII plaintiff who entered into a verbal agreement to settle the lawsuit, but attempted to renege on the entire agreement when it was reduced to writing because it contained a provision not included in the verbal agreement. Upon defendant's request, the district court ordered the parties to comply with all the terms of the settlement agreement except the provision not included in the verbal agreement. In dictum, the Seventh Circuit noted:

> We have treated the issue as one of general contractual interpretation because the parties have done so. We reiterate earlier expressed doubts that Title

> VII settlement agreements are in fact covered by general law—federal common law—rather than by state contract law.

Id. at 548 (citations omitted). *Dhaliwal* did not hold that a Title VII settlement agreement was a state law contract. Clearly, the court had jurisdiction because the disagreement over the settlement agreement arose while the case was still pending before the district court.

Fulgence v. J. Ray McDermott, 662 F.2d 1207 (5th Cir. 1981), likewise involved the enforcement of a verbal agreement to settle a pending Title VII action after plaintiff refused to sign the written agreement which he had earlier verbally approved. The district court ruled that plaintiff was bound by the terms of the verbal agreement and the Fifth Circuit affirmed. Again, the dispute arose while the case was still pending in the district court; therefore, there was never a jurisdictional issue.

Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503 (11th Cir. 1985), was a Title VII action based upon the breach of an executive order conciliation agreement entered into between the employer and the EEOC. The Court held that the aggrieved employees, for whom the conciliation agreement was made, could sue under Title VII for breach of the agreement for the same reasons that the EEOC could bring such suits.

The question before the Court in *Seredinski v. Clifton Precision Products Co.*, 776 F.2d 56 (3rd Cir. 1985), was whether a suit seeking to rescind a Title VII and Age Discrimination in Employment Act (ADEA) settlement agreement because of fraudulent inducement arose under federal law. Thus, the plaintiff was attempting to void the settlement agreement and reinstate her original Title VII and ADEA actions rather than enforcing the agreement. The Court held that the attempt to revive the original Title VII and ADEA discrimination charge by alleging fraud in the procurement of the settlement arose

under federal law. *Id.* at 60. By contrast, Petitioner herein was not attempting to void the settlement agreement nor was she alleging that breach of the agreement constituted unlawful discrimination in violation of Title VII. Petitioner's argument is that the District Court had jurisdiction because the case which the agreement settled arose under Title VII and the District Court retained jurisdiction to enforce the settlement agreement. See *Langley v. JSU, supra,* fn. 2, App. 4, note 2.

The authorities relied upon by Petitioner do not demonstrate that the Court of Appeals' decision is in conflict with any decision of this Court or that there is a split among the circuits on any issue presented by the *instant* case.

IV. THE DISTRICT COURT DID NOT HAVE SUPPLEMENTAL JURISDICTION OVER THE SETTLEMENT AGREEMENT.

Petitioner incorrectly alleges that neither the District Court nor the Court of Appeals addressed the applicability of supplemental jurisdiction. Pet. at 10. The Court of Appeals addressed this issue in footnote 5 of its opinion.

> The consolidation of Dr. Langley's two separate actions did not confer subject matter jurisdiction over the action to enforce the settlement agreement. Where two actions have been consolidated, we must examine "each consolidated case separately to determine the jurisdictional premise upon which each stands."

Langley v. JSU, supra, at 1072 (citations omitted), App. 5, fn. 5. The facts underlying Petitioner's claim for violation of settlement agreement had nothing to do with the facts underlying her Title VII claims. The settlement agreement was entered into in 1987 to resolve a lawsuit filed in 1986, whereas the Title VII action was filed in 1990 based upon alleged occurrences since the settlement

agreement was reached. App. 18-19, 20-21, 23-24. This Court also addressed the issue of supplemental jurisdiction in *Kokkonen, supra.*

> No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court.

Id. at 1676.

V. THIS CASE SHOULD NOT BE REMANDED FOR CONSIDERATION OF TITLE VI, IN ACCORDANCE WITH THIS COURT'S REVERSAL AND REMAND OF *U.S. v. FORDICE,* —— U.S. ——, 112 S.Ct. 2727 (1992).

The remand of *U.S. v. Fordice,* —— U.S. ——, 112 S.Ct. 2727 (1992) does not provide a basis to remand the case *sub judice.*

U.S. v. Fordice, supra, is a class action suit which alleged that state officials had failed to satisfy their obligations under the Equal Protection Clause of the Fourteenth Amendment, and Title VI to dismantle the State of Mississippi's dual system of higher education. The Respondent, Jackson State University, is one of the three historically black institutions alleged to be victims of this dual system. This Court remanded *U.S. v. Fordice, supra,* in light of the State of Mississippi's affirmative duty under Title VI to dismantle its prior dual university system. *U.S. v. Fordice,* —— U.S. ——, 112 S.Ct. at 2737, n. 7. There is no such affirmative duty in this case.

Furthermore, the District Court made "a thorough and careful consideration of the evidence presented" and found no discrimination pursuant to Petitioner's "Titles VI and VII" . . . and "Fourteenth Amendment" . . . claims. (App. 24).

CONCLUSION

The petition filed herein fails to demonstrate that the decision of the Court of Appeals conflicts with any precedent of this Court or with the decision of any other court of appeals. Any conflict that previously existed among the circuit on the jurisdiction of federal courts to enforce settlement agreements not incorporated into the court decrees was resolved by this Court's recent decision in *Kokkonen, supra.*

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

MIKE MOORE
Attorney General
State of Mississippi

LEONARD MCCLELLAN *
MAUDINE G. ECKFORD
Special Assistant
Attorneys General
Post Office Box 220
Jackson, Mississippi 39205
(601) 359-3680
Counsel for Respondents

July 15, 1994

* Counsel of Record